

I6CJGAL1

1 UNITED STATES OF AMERICA
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 371 (RA)

5 JOHN GALANIS, et al.,

6 Defendants.

7 -----x

8 New York, N.Y.
9 June 12, 2018
9:10 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13
14 APPEARANCES

15 ROBERT KHUZAMI,
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: BRENDAN F. QUIGLEY,
REBECCA G. MERMELSTEIN,
NEGAR TEKEEI,
Assistant United States Attorneys

19 PELUSO & TOUGER
20 Attorneys for Defendant John Galanis
BY: DAVID TOUGER

21 BOIES, SCHILLER & FLEXNER LLP (NYC)
22 Attorneys for Defendant Devon Archer
BY: MATTHEW LANE SCHWARTZ
LAURA HARRIS
23 CRAIG WENNER
24
25

I6CJGAL1

Appearances (Cont'd)

PAULA J. NOTARI

Attorney for Defendant Bevan Cooney

- and -

O'NEILL and HASSEN

Attorneys for Defendant Bevan Cooney

BY: ABRAHAM JABIR ABEGAZ-HASSEN

Also present: Kendall Jackson, Paralegal

Ellie Sheinwald, Paralegal

Eric Wissman, Paralegal

Special Agent Shannon Bienick, FBI

I6CJGAL1

(Trial resumes)

(In open court; jury not present)

THE COURT: Good morning, everyone. You may be seated. Sorry to get started late, but I wanted to make sure I read all of the letters that you submitted, including the ones that came in very late last night.

So first on immunity for Francisco Martin, when do you want to do that?

MS. MERMELSTEIN: I think the likelihood is that he testifies after, right after lunch. If I am right about that, we can come back from lunch a few minutes early and do it before the jury gets here. Otherwise, I think we'll have to take a quick break.

THE COURT: That is fine. Just let me know that. I have the signed order here.

Then let's start with Mr. Archer's various pending objections to certain government exhibits. With respect to Government Exhibit 2117, Mr. Archer's motion is granted. The government argues that each of the emails qualify for the party opponent hearsay exception because they represent adopted admissions of Mr. Archer under Federal Rule of Evidence 801 (d) (2).

I find this argument unavailing. While it is clear from the emails Mr. Waddington is providing what he believes to be accurate summaries of conversations he and Mr. Archer had on

I6CJGAL1

1 the telephone, there is no indication Mr. Archer adopted these
2 statements in the emails as being accurate. I don't think the
3 hearsay exception applies and I fail to see any other
4 applicable exception. Thus, unless the government is
5 prepared -- I am keeping that out.

6 As for Government Exhibit 2115, Mr. Archer's motion is
7 denied. It is clearly probative of Mr. Archer's involvement in
8 the purchase of the second tranche of bonds, and I fail to see
9 how it is unduly prejudicial. Mr. Archer points to the fact
10 that the notice is from Chase to Chase and Galanis regarding a
11 transfer exceeding the \$125 alert limit, but I fail to see how
12 this suggests impropriety.

13 So now I want to talk about the Archer Diversified
14 documents, Government Exhibits 225, 226 and 2122. So first I
15 would like to hear the government briefly with respect to when
16 you got these exhibits, when they were marked, just the notice
17 issue on this.

18 MR. QUIGLEY: Your Honor, we got 225 and 226 we got
19 the week before trial and we produced them promptly. They were
20 not stuff we had in our possession beforehand.

21 THE COURT: You just had not planned to use them as
22 exhibits at trial?

23 MR. QUIGLEY: Honestly, we got them in the week before
24 trial. We were still assembling them and trying to build-out
25 summary charts and figure out what the wire went to, the first

I6CJGAL1

1 wire out of the WAPC issue with the bond.

2 MR. SCHWARTZ: That is not true. The email you have
3 had.

4 MR. QUIGLEY: The email we have had. Frankly, I think
5 the Archer Diversified piece of the closing documents frankly
6 was something we needed to investigate further. It was
7 confusing to us. Mr. Galanis clearly bought that apartment.
8 The email was produced, the Rule 16 long ago, but we
9 investigated what especially in light of the defense's opening
10 how Mr. Archer was used by Mr. Galanis.

11 We wanted to make sure that we had closed the loop on
12 whether Mr. Archer was aware his name was being used in
13 connection with the purchase of that apartment. That is how we
14 found an email. We had the document, obviously we produced it
15 a long time ago, but realizing how that fit into our case in
16 chief and how we would have to prove it up was something that
17 developed during the course of the trial, as evidence often
18 does.

19 I think just in terms of the probative value of this,
20 in terms of the probative value of 225 and 226, if the house
21 had been bought or apartment had been bought in the name of
22 Jason Galanis, full stop, I don't think there would be any
23 question that 225 and 226 are highly relevant. They're highly
24 relevant regardless. I acknowledge that Archer Diversified is
25 a complicated factor, but that is what happened. Mr. Archer

I6CJGAL1

1 was aware of that.

2 THE COURT: Just to be clear, in your view, this is
3 probative of the fact that Archer knew that Galanis was trading
4 on his name essentially. You don't have any proof that Archer
5 knew that the proceeds of the condominium would be made using
6 bond proceeds, right?

7 MR. QUIGLEY: I am not sure of that. We cited an
8 email, 2068 in our brief, it is already in evidence, where
9 Mr. Galanis sends Mr. Archer contact lists for the Wakpamni
10 bond distribution. I can pull it up. It is noted in our
11 letter. (Pause)

12 THE COURT: You have 2028?

13 MR. QUIGLEY: 2028.

14 THE COURT: You said in your letter that 512 and 2028
15 essentially put defendants on notice of this issue?

16 MR. QUIGLEY: 2028 puts defendants on notice of this
17 issue that Mr. Archer was aware Mr. Galanis was looking to
18 purchase an apartment with proceeds of the bond issues, yes.

19 512 puts defendants on notice the first wire out of
20 the WAPC account, the first wire that Jason Galanis tells
21 Dunkerley to send relates to the closing of the apartment.
22 This is highly relevant evidence what happens to the bond
23 proceeds, and the Archer Diversified piece of it is relevant
24 for two reasons: Number one, to show that who bought the
25 apartment was, in fact, Mr. Galanis using Mr. Archer's name;

I6CJGAL1

1 and, second, to rebut and confront any argument that, defense
2 argument that Mr. Archer was not on notice of that.

3 THE COURT: All right. Do you want to respond, Mr.
4 Schwartz?

5 MR. SCHWARTZ: Sure. Just to start with the last
6 thing first, to be clear, Exhibit 512 are bank records for the
7 Wealth Assurance Private Client accounts, not something that
8 put Mr. Archer on notice of because it is not anything he ever
9 had insight into. I agree with what Mr. Quigley said, and I
10 said this in my letter.

11 I have no problem with the government proving up the
12 fact, I would stipulate to the fact, that Jason Galanis
13 purchased an apartment in New York City using money that he had
14 taken out of the Wealth Assurance Private Client account. No
15 problem with that.

16 The issue is simply the attempt to tie that to Mr.
17 Archer. All they have on that point is two emails. One is the
18 newly marked 2122, an e-mail that they've had for years and
19 years and years, and if what they were trying to prove was that
20 Mr. Archer was somehow aware of the fact his name was being
21 used, they could have marked this before trial. That is not a
22 secret that that was going to be a defense theme. That was
23 well fleshed out in all of our motions. I object strongly to
24 the late notice part of this, but even taking it on its face,
25 it doesn't prove anything. It doesn't support the inference

I6CJGAL1

1 that they wanted to support.

2 Even if it is true that simply being passively CC'd on
3 an email from a lawyer to Momtazi was somehow to put Mr. Archer
4 on notice of the fact his name was being used, it wasn't being
5 used for anything inappropriate. For someone to say hey, I'm
6 going to use your name when I apply to this club or some other
7 exclusive venue, that is very, very different from I'm going to
8 use your name in connection with the scheme to steal millions
9 and millions of dollars.

10 Even if it were true that Mr. Archer was aware his
11 name was being used by someone who he thought was a friend and
12 a business partner in order to do something legitimate like buy
13 a condominium, which he didn't know came from misappropriated
14 funds, that doesn't support the inference that he, therefore,
15 somehow knew Jason Galanis and others were using his name and
16 Mr. Biden's name in connection with their criminal scheme.

17 There is no evidence of that because if there was any
18 evidence of that, the government would be pointing to it
19 instead of pointing to this stuff, which is very late-coming,
20 right?

21 The email that they point to now, 2028, as the only
22 evidence that shows somehow Mr. Archer understood that the
23 Tribeca apartment that Jason Galanis purchased was being
24 purchased with money stolen from the Wakpamni bonds, that is
25 not what this email is. That is not a fair inference from this

I6CJGAL1

1 email. All this email says is look, we're about to close on
2 one of our first deals and I want to be in New York City. That
3 is what this email says.

4 There is nothing that connects the two, and you've
5 seen already many, many, many emails that the government itself
6 has put into evidence that says what Jason Galanis communicated
7 to Mr. Archer and others was that the money from the bond
8 proceeds was going to be available for discretionary investment
9 so that the companies that they had invested in could use it to
10 make profits. That's what Jason Galanis was telling people.

11 This email, 2028, doesn't prove anything, and again I
12 can't object strongly enough to the notice aspect of this
13 because we don't have time now to go through the millions of
14 documents that the government has produced to us and put
15 together the full story. They have had these documents
16 forever.

17 Mr. Quigley said they just got 2225 and 226. That is
18 not true. 2025 was a production from the SEC from years ago.
19 Maybe they didn't pay attention to it at the time. It is
20 obvious they didn't pay attention to this issue until well
21 after trial started, but that shouldn't be charged against Mr.
22 Archer. It is incredibly prejudicial for them to bring in new
23 evidence which is of such scant probative value this late in
24 the game without giving us an opportunity to fully investigate.

25 MR. QUIGLEY: I disagree with Mr. Schwartz's

I6CJGAL1

1 characterization of 2028, number one, which is already in
2 evidence. Mr. Galanis forwards Mr. Archer an email about the
3 bonds. It is not about nothing else. He said so close,
4 referring to the bond closing, massively -- Cliff, who is
5 Clifford Wolff, is running stall for me on NYC mansion. I want
6 to be here and won't live in a 1750 foot cage. Massively
7 motivated.

8 He is entitled to make his arguments from that, but I
9 think that suggests a strong inference that Mr. Archer was on
10 notice that Mr. Galanis intended to use at least some of the
11 bond proceeds in connection with the purchase a New York City
12 apartment.

13 So again, on the email we have to look back, your
14 Honor. It is also possible that the email has Mr. Wolff on it.
15 I am not sure of this, but it may have been an email we got
16 relatively late in the game because it had Mr. Wolff on it, who
17 is an attorney subject to some of the privilege review. I am
18 honestly not sure, but again the First American Title documents
19 we got the week before trial. We produced in the same day to
20 the defense.

21 This was a matter of seeing how these documents fit
22 into our case. It is two documents. I don't think -- and it
23 is highly critical evidence in terms of proving what happened
24 to the first set of bond proceeds, just to be clear, and we are
25 responding to arguments raised by defendants at trial. There

I6CJGAL1

1 was no -- we didn't get, you know, discovery before trial in
2 any meaningful way. They argued, advanced the scheme
3 Mr. Galanis used Mr. Archer's name unknowingly, and this is
4 directly responsive to this.

5 I don't have an issue with this, but we have, and this
6 makes sense from an efficient perspective. We were willing and
7 accommodating to the defense, putting in defense exhibits in
8 our case rather than waiting for the defense case. While we
9 are not waiving a rebuttal case, I think in light of that, in
10 light of the fact they are not having to put all that stuff in
11 in the defense case, it is permissible for us to do what is
12 ordinarily in the rebuttal case in government's case in
13 response.

14 THE COURT: I am going to allow these exhibits in.

15 Mr. Archer rightly notes the only relevance to him is
16 that established through Government Exhibit 2122, in which he
17 is notified by Clifford Wolff, an attorney representing Jason
18 Galanis, the entity of which Jason Galanis was beneficial
19 owner, Archer Diversified, would rely on Mr. Archer's cachet so
20 purchase a condominium, and the company was using Mr. Archer's
21 office address. The government apparently intends to show the
22 bond proceeds were used to purchase the condominium in
23 question.

24 I agree with Mr. Archer this fails to definitively
25 establish he was aware Jason Galanis misappropriated the bond

I6CJGAL1

1 proceeds. That fact does not warrant its exclusion. Rather
2 the critical consideration is whether the risk of unfair
3 prejudice substantially outweighs the probative value
4 particularly in light of the critical nature to the government
5 of Mr. Archer's knowledge and intent in this case.

6 These exhibits have probative value. Mr. Archer will
7 have ample opportunity to make his point to the jury that these
8 exhibits, in his view, do not establish his knowledge of the
9 improprieties committed by Jason Galanis.

10 With respect to 955, does the government want to be
11 heard on this? I wanted to clarify whether you're seeking to
12 admit the statements made by the chairman of the board of
13 Wealth Assurance and two board members as relayed by Morton for
14 the truth of the matter asserted.

15 MR. QUIGLEY: I think there is both a truth of the
16 matter asserted basis and state of mind basis to admit them.
17 Certainly I think they are -- if you want to break down the
18 email kind of sentence-by-sentence, right, we're going to move
19 forward, first of all, this a statement by a co-conspirator
20 during the course of the conspiracy.

21 It is also, as we said in our letter last night, in
22 furtherance of the conspiracy because he is seeking to enlist
23 the assistance of his attorney to provide color on payables to
24 the board of Wealth Assurance, so they get OP CAP and can close
25 ON the Atlantic acquisition.

I6CJGAL1

1 THE COURT: My question is, so I understand that the
2 acquisition allowed Morton to later purchase the fourth tranche
3 of bonds on behalf of Atlantic's clients, but the acquisition
4 of Atlantic itself was a legitimate transaction, right?

5 So in terms of whether this was in furtherance of the
6 conspiracy, do you want to respond to that?

7 MR. QUIGLEY: It depends on what you mean by
8 legitimate transaction. There is evidence both in the record
9 and from --

10 THE COURT: It wasn't financed with proceeds of the
11 bond issuance, but other illegitimate funds?

12 MR. QUIGLEY: It was not financed with the proceeds of
13 the bond issues. This is where the timing is critical and it
14 is the same pattern that occurred in Hughes.

15 A new company is bought, and within the matter of
16 weeks, over \$16 million of bonds are placed in the Atlantic
17 account. The purchase, Mr. Dunkerley testified that the
18 primary purpose of the acquisition of Hughes was to place the
19 first tranche of bonds in the Atlantic acquisition, and the
20 bonds followed the similar pattern. The Atlantic closed seven
21 days after this, April 2, 2014. Within two weeks OCERS had \$16
22 million of the final tranche of Wakpamni bonds put in the
23 account, and a week after that Atlantic gets \$300,000 infusion
24 of net capital.

25 So I guess it is not an illegitimate transaction. It

I6CJGAL1

1 is illegitimate on its face. The purpose of that transaction,
2 we argue and we think supported by the timing and the
3 circumstantial evidence, was to find buyers for the final
4 tranche of Wakpamni bonds.

5 Mr. Smith, his testimony supports that also. He finds
6 out that the company has been bought, and then lo and behold, a
7 couple of weeks later he gets a message, by the way, we bought
8 \$16 million of bonds in your account. It is extremely, even if
9 not direct evidence, there is very strong circumstantial
10 evidence that the purpose of Atlantic, the purpose of Atlantic
11 acquisition was to find buyers for the final tranche of
12 Wakpamni bonds.

13 Here Michelle Morton is expressing -- and there will
14 be some testimony this morning from Turney and there was
15 testimony from Mr. Dunkerley, that that transaction closing of
16 Atlantic was drawn out and there was a back-and-forth about the
17 precise terms of that and that this was part of what got Ms.
18 Morton, and this is why it is relevant to her state of mind
19 also, not for the truth of the matter asserted, but what got
20 her over the hump in terms of closing Atlantic.

21 It is not a surprise she meets on March 25, 2015, and
22 we'll establish that one of the people she met with was Mr.
23 Archer on that day, and a week later the transaction closes,
24 and two weeks after that she buys \$16 million of bonds that
25 nobody wants, and then gets \$300,000 in operating capital, all

I6CJGAL1

1 within a span of less than, four weeks, less than a month.

2 THE COURT: Does anyone want to respond on this one,
3 on 955?

4 MR. SCHWARTZ: Excuse me?

5 THE COURT: Does anyone want to respond on 955?

6 MR. SCHWARTZ: I am not sure I heard the answer to
7 your Honor's original question, which was whether the hearsay
8 within hearsay is being offered for a non-hearsay --

9 THE COURT: You are right. Do you want to respond?

10 MR. QUIGLEY: Sure. I am not sure there is a
11 statement of fact from -- two things -- I am not sure that they
12 will give us the OP CAP, which is the statement Mr. Schwartz is
13 referring to, is a statement, out-of-court declaration from
14 somebody from Wealth Assurance coming in for the truth of the
15 matter asserted. That shows Morton's state of mind and course
16 of dealing between her and the leadership of what he believed
17 was the board of Wealth Assurance. There is not a hearsay
18 within a hearsay problem, I don't think. It goes to her state
19 of mind and course of dealing.

20 THE COURT: Do you want to respond?

21 MR. SCHWARTZ: I will rest on the papers.

22 I don't think Michelle Morton's state of mind on this
23 issue is of any particular relevance. This is not really a
24 statement in furtherance of the conspiracy. I understand the
25 logic that Mr. Quigley just articulated, which is to say

I6CJGAL1

1 somehow the entire acquisition of Atlantic and Hughes was, in
2 their view, in furtherance of the bond scheme, but there is no
3 question these were also legitimate transactions, as he says,
4 in the sense they're all funded from legitimate money in order
5 to further a legitimate goal.

6 I don't know how your Honor can conclude in the way
7 that you would have to that this is a statement in furtherance
8 of the conspiracy, one; and, two, the underlying hearsay, the
9 statements of the board members, is plainly being offered for
10 its truth. The relevance of Michelle Morton's state of mind is
11 unarticulated and totally unclear. This entire thing is
12 totally confusing.

13 They say they're going to be able to prove there was a
14 meeting at which Mr. Archer attended. If that is so, they
15 should prove it. That is not what this says. As we put in our
16 letter, there it is utterly unclear who this could be referring
17 to because it is simply impossible that Michelle Morton met
18 with the chairman and two other board members of Wealth
19 Assurance, and one of them was Mr. Archer because that
20 configuration of people literally could not exist. It is very
21 very confusing.

22 MR. QUIGLEY: On the last point, well, I don't think
23 that the statement they will give us OP CAP is a hearsay within
24 a hearsay statement. Again it is relevant to Morton's state of
25 mind and future course of dealing. Her state of mind is

I6CJGAL1

1 relevant. She pled guilty, but she is still a co-conspirator
2 and her state of mind is relevant to proving the existence of
3 the conspiracy.

4 THE COURT: Sorry. Just clarify for me who all the
5 people referenced in the email are.

6 MR. QUIGLEY: She had a meeting in New York City on
7 March 25th. I believe it was at the Burnham offices. In her
8 text message with Jason Galanis she makes clear one of the
9 people she met with was Mr. Archer that day, she met with him
10 that day.

11 In terms of the chairman of the board of Wealth
12 Assurance, I think, I don't know who she is precisely referring
13 to, but she is referring to, she met with Mr. Archer that day,
14 and they discussed, it is clear from the text messages that
15 will come in later, among the topics of discussion were the
16 acquisition of Atlantic.

17 I think one thing here in terms of Wealth Assurance
18 AG, Wealth Assurance Holdings, Wealth Assurance Private Client,
19 we have made, and the defense has made, and it is right to
20 make, to be accurately precise at trial. That is not the way
21 people talk in context emails. She is not necessarily
22 referring to the board of Wealth Assurance AG here. She is
23 referring to the people who she believed were her financial
24 backers, who she was having discussions about the terms of the
25 Atlantic acquisition.

I6CJGAL1

1 THE COURT: The jury is here now. When were you
2 planning to read this?

3 MR. QUIGLEY: Turney, the first witness after the
4 email reading because he is a percipient witness on this.

5 THE COURT: I will rule at sidebar before Turney comes
6 in. Do you want to make one more point?

7 MR. SCHWARTZ: To make the suggestion, which may not
8 be practical, the evidence they say they're going to put in
9 showing this meeting occurred, as we will demonstrate later on
10 in cross-examination, they're confused, they're conflating a
11 few different meetings, and I had suggested wait until that
12 comes in to rule. If it is for Turney, you can't. They're
13 simply wrong about the meeting.

14 MR. QUIGLEY: We'll offer it to subject to connection
15 and not publish it to the jury.

16 THE COURT: I am going to think about that for a few
17 minutes. I ruled on the Cooney-Crafton reporting. I want to
18 talk with defense counsel, with everyone, obviously, before the
19 defense case about ways in which I think the portion I have
20 been given should be shortened and redacted. I have answered
21 the government's point on that. Can we bring in the jury?

22 MR. SCHWARTZ: Can I say one last thing going back to
23 to the Archer Diversified email?

24 THE COURT: Yes.

25 MR. SCHWARTZ: I am not seeking to reargue your

I6CJGAL1

1 Honor's ruling. In light of the ruling, I want to renew my
2 request in alternative for an adjournment in order to
3 investigate. In particular, through a witness, through
4 Catharine Driever, who was on the stand long before the
5 government marked this evidence, I brought out evidence about
6 the real Archer Diversified, which is Mr. Archer's entity, and
7 it is going to be absolutely necessary to disentangle the Jason
8 Galanis Archer Diversified TCG from the real Archer
9 Diversified, and that will require some time unless the
10 government wants to stipulate that they're entirely different
11 entities and Mr. Archer has nothing to do with Archer
12 Diversified TCG.

13 THE COURT: Would you be willing to stipulate to that?

14 MR. QUIGLEY: Your Honor, we are willing to discuss a
15 stipulation. I don't know if we are quite willing to go that
16 far in terms of Mr. Archer having nothing to do with it. I
17 take the point that the Archer Diversified, there is more than
18 one entity with Archer Diversified.

19 THE COURT: When are you going to utilize those
20 exhibits?

21 MR. QUIGLEY: We were going to read them in -- well, I
22 think it depended -- we talked with Mr. Schwartz about a
23 stipulation from those exhibits which I think was awaiting your
24 ruling on this issue, then the email we were going to read in
25 through email reading. It is not something that needs to

I6CJGAL1

1 happen today.

2 THE COURT: Okay. It is not something that --

3 MR. QUIGLEY: Needs to happen today.

4 THE COURT: My only question is can you talk about a
5 possible stipulation distinguishing the two Archer
6 Diversifides?

7 MR. QUIGLEY: There are emails and documents in that
8 production that show when that Archer Diversified was created,
9 and we can work --

10 MR. SCHWARTZ: We'll talk about.

11 THE COURT: We'll bring the jury in, then.

12 MS. NOTARI: Mr. Hassan, can we get him?

13 THE COURT: Sure. (Pause)

14 (Off-the-record discussion)

15 MS. NOTARI: We are just reading now?

16 THE COURT: We are just reading now, yes.

17 MS. NOTARI: That is okay. We can start.

18 (Jury present)

19 THE COURT: Good morning, everyone. Good morning.
20 You may be seated. Thank you. You may proceed.

21 MS. TEKEEI: Thank you, your Honor. Before we get
22 started, we would like to offer the following exhibits into
23 evidence: Government Exhibits 2095, 2224, 2299, 2294 and 1271.

24 THE COURT: They will be admitted.

25 (Government's Exhibits 2095, 2224, 2299, 2294 and 1271

I6CJGAL1

received in evidence)

MS. TEKEEI: Thank you, your Honor.

Q. Special Agent, good morning.

A. Good morning.

Q. If you could turn to Government Exhibit 2115.

MS. TEKEEI: Per the court's earlier ruling, this is now in evidence, your Honor.

THE COURT: Yes.

BY MS. TEKEEI:

Q. This is an email on September 24th, 2014 from Chase to subject your wire transfer to Jason at holmbycompanies dot com for Chase account ending in 3181: This is a security alert you requested to help you protect your account. A wire transfer of USD \$15 million to has exceeded your USD \$125 alert limit on September 24th, 2014.

A. This email was forwarded on the same day from Jason Galanis to Devon Archer, Clifford A. Wolff, Esquire, and Sebastian Momtazi, FYI.

Q. If we could now turn next to Government Exhibit 2052. Email from Jason Galanis -- Jason at holmbycompanies dot com on October 21, 2014. Working Fondinvest and Atlantic. Will report. Couple of other "sniblees" percolating.

A. On October 1, 2014, Devon Archer, big accomplishment today gentleman. Let's each have chug of wine beer or shot. Devon Archer.

I6CJGAL1

1 Q. Email on October 1, from Bevan Cooney to Devon Archer CC
2 Jason at hombycompanies dot com. A satellite toast is in
3 order.

4 If we can turn next to Government Exhibit 2231. On
5 October 1, 2014, Jason Galanis wrote: Agreeing is getting
6 reference letters together for West Broadway closing. Dean of
7 Oxford, Ex-assistant Deputy Attorney General of the United
8 States, and a former Assistant U.S. Attorney. Not presidents
9 and secretaries, but scrappy for the damaged Greek.

10 A. Bevan Cooney then wrote, let me start by saying Jason
11 Woodruff Galanis is a man of Valor and integrity. He has a
12 real appreciation for burning the midnight oil with his
13 friends. Loves blaring loud music, over eating and drinking
14 more than his fair share of alcohol. He is a modern day Roman.

15 Q. From Devon Archer same day to Bevan Cooney, copying Jason
16 Galanis, seconded. Devon Archer.

17 If we can turn next to Government Exhibit 3215. And
18 Ms. Shinewald, if you can go to the second page of this exhibit
19 to begin with.

20 We'll start with on October 1, 2014, Matthew Fillman
21 wrote: Bevan: All the paperwork has been submitted. I should
22 have the new account forms for signature tomorrow morning.
23 Eric can sign those on your behalf. I will scan a copy back to
24 the bank and send the originals with our afternoon courier.
25 The account should be open and I will have the account number

I6CJGAL1

1 for you sometime tomorrow afternoon.

2 A. Then on Thursday, October 2, 2014, Bevan Cooney sent an
3 email to Matthew Fillman, CC Eric Fulton with a subject line
4 re: Securities account for muni bonds.

5 Matthew, do we have my securities account open. Need
6 account number and wiring info asap. Want to buy these bonds
7 tomorrow if possible. Best, Bevan.

8 Q. On October 2, Matthew Fillman wrote: Where are you now?

9 And, Ms. Shinewald, if you could please place this
10 page over to the right and pull up the first page of the
11 exhibit on the left.

12 A. Bevan Cooney then wrote to Matthew Fillman in Tahoe.

13 Q. On October 2, Matthew Fillman wrote I forgot your checking
14 account is in your trust. Are you okay with us signing a cert.
15 of trust on your behalf? So we can get this done today.

16 A. Bevan Cooney then responded to Matthew Fillman, CC'g Alexis
17 Gluckman, yes, of course.

18 Q. On October 3, Matthew Fillman wrote account number is MGR
19 200234. Reggie (Regina) Clark and Jimmy Torres are assigned
20 the account but anyone can help you.

21 A. Then Bevan Cooney responded to Alexis Gluckman and Matthew
22 Fillman: Thanks again Matthew, planning on wiring funds on
23 Monday and buying the bonds. Have a great weekend.

24 (continued on next page)

I6C7GAL2

1 Q. Turning next to Government Exhibit 2053. On October 7,
2 2014, Catharine Driever wrote:

3 "Hi, Devon. Our compliance group needs more info
4 regarding FLKM and Wakpamni. More detail is better than less
5 in order to get these approved.

6 "FLKM

7 "1. How were these shared shares obtains? We know
8 they were transferred here from Interwest, but who did they get
9 to Interwest?

10 "2. On the form you indicated that the shares were
11 free -- were they a form of compensation, etc.?

12 "3. Were these shares ever restricted?

13 "Wakpamni

14 "1. Please provide more detail as to how you came to
15 know of this issuance.

16 "2. How was the \$15 million generated that was used
17 to purchase the bonds?"

18 A. Then Devon Archer responded, cc'ing Sebastian Momtazi,
19 Eugene Schatz, to Catharine Driever, on Tuesday, October 7,
20 2014, with the subject line: More info needed FLKM and
21 Wakpamni.

22 "1. Shares were part of compensation for packaging
23 deal.

24 "2. I think they were purchased at \$0.01 par.

25 "3. Not restricted.

I6C7GAL2

1 "1. Burnham Financial packaged the issuance of which
2 I am a shareholder.

3 "2. \$15 million was generated through sale of real
4 estate.

5 "Devon Archer."

6 Q. If we could turn next to Government Exhibit 1272, e-mail
7 from Jason Galanis on October 6, 2014 to Timothy Anderson,
8 copying Jared Galanis:

9 "I'd like to close him tomorrow if possible. His name
10 is Bevan Cooney. He has his money managed at City National.
11 Experienced institutional bond desk there.

12 "Let me know what we need."

13 A. A response from Timothy Anderson, dated October 7, 2014 to
14 Jason Galanis, cc'ing Jared Galanis:

15 "Bevan Cooney is OK closing tomorrow/Thursday? He'll
16 need to sign the big boy letter. Nothing else. I'll get
17 Burnham's signature package together as well. Timothy
18 Anderson."

19 Q. E-mail forwarded from Jason Galanis on October 7 to Bevan
20 Cooney. If we could turn next to Government Exhibit 1226.
21 And, Ms. Sheinwald, turning to the third page of that exhibit,
22 e-mail from Sebastian Momtazi to Cheryl Green and Alex Hewit
23 copying John Tonzola and Devon Archer, on September 30, 2014,
24 subject: Bond Purchase:

25 "Hi, Cheryl.

I6C7GAL2

1 "Would we be able to purchase and hold some of the
2 bonds below through Deutsche Bank? It's a knew issue, DTC
3 eligible. Please let me know the process. Thanks and best,
4 Seb."

5 "Issuer: Wakpamni Lake Community Corp. S D SPL LTD
6 REV.

7 "Issue Description: Taxable town center develop

8 "Dated: September 26, 2014."

9 A. Also on September 30, 2014 Cheryl Green wrote: "Hi
10 Sebastian, we'll get back to you on this momentarily. In the
11 meantime, the attached was sent earlier and I did not see a
12 signed copy back to us. (See attached file: W-9.pdf). Thank
13 you. Kind regards, Cheryl Green."

14 Q. Ms.Sheinwald, if you could pull up page 1 of this exhibit
15 on the left and page 2 on the right side by side. E-mail from
16 Sebastian Momtazi to Cheryl Green copying Alex Hewit, Devon
17 Archer and John Tonzola, on October 7:

18 "Hi, Cheryl and Alex.

19 "Thank you for your help getting the account opened so
20 swiftly. Rosemont Seneca Bohai owns a portion of the bonds
21 now. What steps would we need to take to have them held at
22 Deutsche Bank?"

23 A. On October 7, 2014 John Tonzola wrote: "How did the entity
24 come to own these bonds? Also, where are these bonds held
25 currently?"

I6C7GAL2

1 Q. E-mail from Devon Archer on October 8 to John Tonzola
2 copying Sebastian Momtazi, Alex Hewit and Cheryl Green,
3 regarding bond purchase:

4 "1. Real estate sale.

5 "2. Currently held at Morgan Stanley Archer
6 Diversified Private Banking account. Devon Archer."

7 If we could turn next, Ms.Sheinwald, to Government
8 Exhibit 3216, and turning to the second page if you could
9 please put the first page next to the second page again.

10 E-mail from Alexis Gluckman on October 7:

11 "Hi, How do you want me to record the wire that came
12 in yesterday?"

13 A. Then a response from Bevan Cooney sent Wednesday, October
14 8, 2014 to Alexis Gluckman, with the subject: Huge wire.
15 Smilely face.

16 "Book as a loan, Alexis. Thanks."

17 Q. From Alexis Gluckman to Bevan Cooney the same day: "Will
18 do."

19 If you could turn next, Ms.Sheinwald, to Government
20 Exhibit 3217.

21 A. This is an e-mail with subject: "These instructions are for
22 purchase of Wakpamni Town Center bonds for tomorrow a.m. From
23 Bevan, dated October 9, 2014, to Matthew Fillman:

24 "To whom it may concern, please consider this my
25 written instruction for the purchase of \$5 million of the 6.02

I6C7GAL2

1 percent Wakpamni Town Center development bonds due in 2021
2 (CUSIP: 931130 AD0).

3 "The issue is a private placement new issue. U.S.
4 Bank is the indentured trustee and the bond registrar.

5 "A wire should be initiated to U.S. Bank for \$5
6 million and physical delivery should be coordinated with U.S.
7 Bank directly. The bank's wiring and contact information is
8 below.

9 "thank you for your assistance. Bevan Cooney.

10 "Issuer: Wakpamni Lake Community Corp. S D SPL LTD
11 REV.

12 "Issue description: Taxable Town Center DEV-SER A.

13 "Dated: October 9, 2014."

14 Q. Ms.Sheinwald, if you could turn next to Government Exhibit
15 1236, beginning with the e-mail in the middle of the page.

16 On October 9, 2014, Bevan Cooney wrote: "Just
17 executed my \$5 million bond purchase without a hitch at City
18 National Bank Archie. Need to get you out of Morgan Stanley."
19 Emoticon.

20 A. Also on October 9, 2014, Devan Archer wrote: "It's over.
21 Milkman sucks. Moving to DB. Big leverage. Devon Archer."

22 Q. The same day Bevan Cooney wrote: "We gave Milky his shot.
23 He's Dungi."

24 A. Then Devon Archer wrote also on October 9, 2014 to Bevan
25 Cooney, with the subject line: WLCC bond copy.

I6C7GAL2

"Loser. Devon Archer."

Q. If we could turn next, Ms. Sheinwald, to Government Exhibit 1273. and if you could please put page 1 and page 2 of this exhibit next to each other.

E-mail from Michelle Morton. Subject: Proper Screen Shot. On October 16, 2014 to Jason Galanis:

"Embedded and attached is the proper screen shot:

"Wakpamni Lake Community Corp., Special Limited Revenue Taxable Town Center Development Series A.

"Issue type: Revenue bonds.

"Borrower: Wakpamni Lake Community."

A. Betty Mills then forwarded from Jason Galanis on Thursday, October 16, 2014, to Bevan Cooney with the subject: Proper Screen Shot.

Q. Ms. Sheinwald, if we could turn next to Government Exhibit 2241.

On October 9, 2014, Keith Henselen at U.S. Bank.com wrote: "The physical bond was sent via UPS on October 9, 2014, received October 13, 2014 to Bevan Cooney per the instruction I received. Delivered to Incline Village, Nevada address?"

A. Then Bevan Cooney responded on Wednesday, October 29 to Keith Henselen, cc'ing Matthew Fillman, Alexis Gluckman and Timothy B. Anderson with the subject line: These Instructions Are For Purchase of Wakpamni Town Center Bonds for tomorrow a.m. 10/9/2014:

I6C7GAL2

1 "I have this paperwork from the bond. Should I
2 deliver this to City National Bank?"

3 Q. E-mail on October 29, Matthew Fillman wrote: "Just get it
4 to me."

5 A. Then Bevan Cooney responded to Matthew Fillman on
6 Wednesday, October 29, 2014: "Just dropped off the bond at
7 Steve Shapiro's office. Thanks Matt."

8 Q. Ms.Sheinwald, if we could turn next to Government Exhibit
9 3276.

10 On November 10, 2014 Matthew Fillman wrote: "They are
11 a go, started the process ..."

12 "What's the deal with/these bonds? Is there a back
13 story? Did someone turn you on to this particular issue?"

14 A. Bevan then responded to Matthew Fillman on Monday, November
15 10, 2014, with the subject line: Pershing is a go ...

16 "Good news Matt. Yes, Burnham Securities out of New
17 York was the placement agent. That's who turned me on to it.
18 Thanks for all the help. Best, Bevan."

19 Q. If we could turn next to Government Exhibit 2256, and,
20 Ms.Sheinwald, if you could turn to the second page of this
21 exhibit, the e-mail at the bottom from Bevan Cooney to Debbie
22 Robert, Eric Fulton, Elizabeth Ricin and Alexis Gluckman on
23 January 15, 2015, subject: Source of Down Payment for 1920 Bel
24 Air:

25 "Please send me the wire info on the \$3.9 million that

I6C7GAL2

1 came into my account and went out to Camden Escrow for the down
2 payment for the 1920 Bel Air purchase."

3 A. On January 16, 2015 Debbie Robert wrote: "I have added the
4 wire instruction sheets to the Dropbox. I sent you the link
5 yesterday. Please let me know if you need it again?"

6 Q. Now, Ms.Sheinwald, if you could now turn to the first page
7 of this exhibit, an e-mail from Bevan Cooney on Tuesday,
8 January 20, 2015 to Debbie Robert:

9 "Debbie, please send me a pdf of the down payment wire
10 info from Wealth Assurance Holdings and the wire from CNB to
11 Camden Escrow. It's not showing up in their Dropbox for some
12 reason."

13 A. Then Bevan wrote to Jason Galanis with the subject:
14 Forward source of down payment for 1920 Bel Air. On Tuesday,
15 January 20, 2015: Two attachments: One, wire incoming.pdf;
16 and the other, escrow outgoing.pdf.

17 Q. And, Ms.Sheinwald, if you could pull up the fifth page --
18 sorry -- the 7th page of this document, which is the first
19 attachment. One more page over.

20 Now, Ms.Sheinwald, if you could next turn to
21 Government Exhibit 2070, an e-mail from Jason Galanis, subject:
22 Responses requested. On March 5, 2015 to Michelle Morton.

23 "Michelle, you asked for some specific information.
24 The responses are below.

25 "In connection with the issuance of the bonds, partial

I6C7GAL2

1 proceeds were released to the Oglala Sioux in accordance with
2 the bond offering. The rest of the proceeds are invested in
3 the annuity. The annuity is up four percent since issuance.

4 "The construction of the bonded warehouse has started.
5 Recent photos attached. It will be operated as a certified
6 U.S. customs bonded warehouse and legally able to receive
7 imported distilled sports tax free and be authorized to sell
8 and ship to other Indian nations.

9 "The tribe has the right to draw additional monies
10 from the annuity on the 30th month anniversary of the bond
11 closing. This is based on a third-party appraisal of the
12 business, as provided for in the supplemental offering
13 memorandum."

14 A. Then Jason Galanis wrote to Devon Archer and Bevan Cooney
15 on Friday, March 6, 2015, forwarded responses requested and
16 attachment: A recollection.pdf.

17 Q. Ms.Sheinwald, if you could please pull up the first
18 attachment and the second attachment which are pages 3 and 4 of
19 this exhibit next to each other. Sorry, I meant to say pages 2
20 and 3.

21 And if you could now turn to the fourth page of the
22 exhibit.

23 OK. If you could turn next to Government Exhibit
24 2072, e-mail from jason@holmbycompanies.com on March 6, 2015 to
25 Michelle Morton, subject: U.S. Bank confirm of annuity

I6C7GAL2

1 purchase.

2 A. Then there was an e-mail from Holmby to Devon Archer and
3 Bevan Cooney, sent Saturday, March 7, 2015, with the subject:
4 U.S. Bank confirm of annuity purchase. And two attachments:
5 WLCC Town center bonds closing statement, 9OCT2014.pdf; and the
6 other ATT00001.htm.

7 Q. Ms.Sheinwald, if you could please turn to the first page of
8 the attachment, which is page 2 of the exhibit, closing
9 statement \$15 million Wakpamni Lake Community Corporation,
10 special limited revenue bonds (taxable), series of 2014 (town
11 center development).

12 Ms.Sheinwald, if you could turn next to Government
13 Exhibit 2276, e-mail from Richard Isaacs, subject: Pershing
14 and DTC on March 25, 2015 to btcooney@g-mail.com.

15 "Bevan, Pershing has refused to initiate the input of
16 the bonds into the DTC system. They claim regardless of
17 circumstance, the broker/dealer that inputs a bond in the
18 system to create DTC eligibility is incurring a potential
19 liability to other issues if they arise with the bond. Given
20 they didn't underwrite, and the size of the issue, I can't get
21 them comfortable or willing. At this point I have run out of
22 options. I believe the best course of action is to immediately
23 establish a Morgan Stanley account with the person who handles
24 your partners and arrange for them to complete this process for
25 you. Logistically, if we're going to move them to Morgan

I6C7GAL2

1 Stanley, we need to deliver the bonds to you. I have inquired
2 whether they will take your instructions to deliver the bonds
3 via their overnight service (UPS) to a direct contact at Morgan
4 Stanley or if they will only send to your address of record
5 which is listed on your account. That address is Fulton &
6 Meyer. Based on this past history, I suspect it will be to
7 address of record at F & M. Given it's tax time, if we do send
8 to Fulton & Meyer, I want to make sure we send directly to Eric
9 and have Monika on the look out for the bonds. We can provide
10 Monika on instructions on where to forward them.

11 "I'm very sorry this is not the news/outcome we've
12 hoped for. I appreciate your patience and effort as we
13 exhausted our options."

14 A. Also on Wednesday, March 25, that e-mail was forwarded from
15 Bevan Cooney to Jason Galanis: "Fuck."

16 Q. Ms.Sheinwald, if you could turn next to Government Exhibit
17 2118, an e-mail from Devon Archer to jason@holmbycompanies.com,
18 copying Sebastian Momtazi on March 27, 2015, the subject:
19 Director Conf of APPT-VL Assurance (Bermuda) Ltd. and
20 attachment.

21 And, Ms.Sheinwald, if you could show us the first page
22 of that attachment.

23 A. This is a letter with the heading from the board of
24 directors of VL Assurance (Bermuda) Ltd.

25 "Dear sirs, the undersigned hereby accepts the

I6C7GAL2

1 appointment as a director of VL assurance (Bermuda) Ltd, ("The
2 Company") effective when so appointed by the shareholder of the
3 company. For the purpose of the register of directors and
4 officers of the company, and for service of notice of board
5 meetings, the contact details are as follows:

6 "Devon Archer, 152 West 57th Street, 47th floor, New
7 York, New York 10019, USA, United States of America.

8 "E-mail: Darcher@rosemontcapital.com,

9 "Yours faithfully, signed Devon Archer. Dated March
10 27, 2015."

11 Q. Ms.Sheinwald, if you could turn next to Government Exhibit
12 2075, e-mail from Sebastian Momtazi on March 31 to Iris Gomez,
13 copying Devon Archer. Subject is bond transfer:

14 "Iris, per our conversation, please see attached
15 letter and instructions. Let me know what we need to do to get
16 this done quickly."

17 A. Then on March 31, 2015 Sebastian Momtazi wrote to Iris
18 Gomez, response with an attachment bond signatures.pdf.

19 "Attached are signed copies."

20 Q. And, Ms.Sheinwald, if you could turn to the second page of
21 this exhibit.

22 A. This is a letter dated March 27, 2015 from Morgan Stanley,
23 attention Kyle Wool.

24 "Dear Mr. Wool, please DTC 9000 Wakpamni Lake SD
25 Community Corp. SPL Limited Revenue bonds from the account

I6C7GAL2

1 titled RSB LLC (654-028319) to the follow instructions:

2 "DTC352, account: Burnham Securities, Inc. SDN
3 collateral account.

4 "If you have any questions, please feel free to call.
5 Thank you. Signed Devon Archer."

6 Q. And, Ms. Sheinwald, if you could turn to the third page,
7 regarding transfer instructions.

8 "Dear Mr. Wool, confirming our conversation, RSB is
9 participating in a capital increase of Valor Group Ltd. (f/k/a
10 Wealth Assurance Holdings; Bermuda stock exchange: WAH.BH).
11 Valor Group is acquiring 100 percent of Bermuda International
12 Insurance Services Ltd. from the BF&M, the 100 year old Bermuda
13 Stock Exchange-listed insurance group.

14 "As you know, Devon Archer is an existing beneficial
15 owner of Valor Group common stock. This stock is held with
16 MSSB.

17 "Please consider this your written instructions to
18 transfer to HSBC (instructions below) by DTC bonds from the
19 account titled RSB LLC issued by Wakpamni Lake Community Corp.
20 SPL (CUSIP) in the amount of \$11.6 million, at par.

21 "The transaction is closing tomorrow, so the
22 consideration needs to be delivered post haste. Please advise
23 what steps need to be taken to confirm the transfer for
24 tomorrow.

25 "Thank you." Signature.

I6C7GAL2

1 Ms.Sheinwald, if we could turn next to Government
2 Exhibit 3245, and beginning with the bottom e-mail.

3 A. On Wednesday, April 1, 2015 Bevan Cooney wrote to Alexis
4 Gluckman with the e-mail subject: Make sure this still gets
5 paid, Alexis.

6 "Alexis did you get the e-mail regarding the sale of
7 my bonds and the process we need to complete?"

8 Q. On April 1, Alexis Gluckman wrote: "Just read it now and I
9 will start the process."

10 A. Then Bevan Cooney responded to Alexis Gluckman: "Call Rich
11 Isaacs my broker if you have any questions. We need to make
12 sure I sign anything we need me to before I leave on Saturday.
13 This is a huge trade. Have an institutional buyer lined up to
14 take me out of this bond position. Super top priority. Solves
15 all my problems. Thanks A."

16 Q. If we could turn next to Government Exhibit 2077, e-mail
17 from Sebastian Momtazi to Iris Gomez and Joseph Fereno, cc
18 Devon Archer, on April 9, 2015, the subject is bonds transfer.

19 "Iris, please see attached for a bonds transfer
20 request to be completed ASAP."

21 And, Ms.Sheinwald, if we could turn to the attachment.

22 A. The attachment has a header of RSB LLC, dated April 9,
23 2015, Iris Gomez, Morgan Stanley wealth management, re:
24 654-028319.

25 "Dear Iris, please take this letter as authority to

I6C7GAL2

1 transfer the entire position (\$15 million) Wakpamni Lake
2 Community bonds (CUSIP 931130AC2) from RSB LLC Morgan Stanley
3 account 654-028319 to VL Assurance (Bermuda) Ltd. Morgan
4 Stanley account 654-030737. Thank you." Signed Devon Archer.

5 Q. If we could turn next to Government Exhibit 2079, and
6 beginning at the e-mail on the bottom.

7 A. On April 24, 2015 Jason Galanis wrote: "Guys, if we
8 hustle, we can get the \$5 million on the Burnham's balance
9 sheet this month. This would require Bevan getting his
10 physical bond delivered to U.S. Bank for transfer into
11 Burnham's name. This would mean Fed Ex'ing today.

12 "As an alternative, Andrew, you should check with
13 Marcel to see if the bond can be recorded on the balance sheet
14 if Burnham has in hand, one, an executed secured demand notice
15 from Cooney, two, the physical securities delivered from Cooney
16 to Burnham together with medallioned stock powers. My strong
17 belief is the securities would be deemed delivered if this were
18 in hand, and the deposit of the security would be
19 administrative only between Burnham and U.S. Bank.

20 "We need to confirm "the deal" between the parties
21 today. I've discussed with both of you what I wanted to
22 achieve. Broadly the goal is to get Cooney some reliable
23 income while getting Burnham net cap it can be
24 commercialized" -- I'm sorry -- "it can commercialize.

25 "Separate from Bevan, I believe that an structure that

I6C7GAL2

1 would be equitable to the Indians would be for Burnham to pay
2 some participation on the revenue generated that is attributable
3 to net cap. Let's discuss today.

4 "Open question remains about Bonwick net cap and
5 whether Burnham could deliver securities to Bonwick and
6 essentially stack.

7 "Separately we need to paper the \$3 million and the
8 \$650,000 cash infusions, and the impending \$750,000. Also the
9 money we are putting in Burnham to put in Bonwick. There will
10 also be an aggregate of over \$10.5 million of new money
11 invested in Burnham. Jason."

12 Q. From Bevan Cooney the same day: "Let me know if we should
13 send to U.S. Bank or Burnham. I can expedite this morning.
14 Let's get the process started."

15 A. Also on the same day, Andrew Godfrey wrote: "The best bet
16 would be to send to Burnham. That way Marcelle can place into
17 separate subordinated loan account."

18 Q. E-mail from Bevan Cooney the same day to Andrew Godfrey,
19 copying Jason Galanis and Devon Archer, Re: Burnham.

20 "I will have the cert medallion guaranteed and sent to
21 Burnham. I will e-mail my business manager Alexis and copy you
22 Andrew so we can hopefully get this expedited and out to
23 Burnham this a.m."

24 If we could turn next to Government Exhibit 2084, and
25 beginning with the e-mail on the bottom from Jason Galanis,

I6C7GAL2

1 subject: Morgan revised five responses. On April 30, 2015, to
2 asteichen@valorlife.com.

3 "Aloyse, one version is red lined so you can see the
4 revisions made to reflect your comments. The other is clean.
5 They did not ask for an org chart. My instinct and advice is
6 not to offer it yet. I would recommend being responsive only
7 to what they asked in the teaser. Your call of course. Best,
8 Jason."

9 A. On April 29, 2015, Jason Galanis wrote: "Relentless Greek
10 attack."

11 Q. The same day, Bevan Cooney wrote: "The 'Greek Machine'
12 just doesn't stop."

13 A. Then Holmby wrote: "Arch and I attacking Teneo tomorrow.
14 I have Devin with an I tomorrow. Huge."

15 Q. E-mail from Bevan Cooney on April 30, 2015 to
16 jason@holmbycompanies.com, copying Devon Archer: "We continue
17 to press until we have a huge surplus of excess honey. Devon
18 should be a great bee keeper for our native bonds. Excited to
19 hear how that meeting goes."

20 Ms.Sheinwald, if you could turn next to Government
21 Exhibit 2086. On May 12, 2015 Sebastian Momtazi wrote: "Hi,
22 David. Would you be able to provide a letter requesting that
23 the Wakpamni bonds in the VL Assurance group be transferred to
24 be under the Kyle Wool/Jerome Niles Rep 41 group?"

25 A. Also on May 12, 2015 Devon Archer wrote: "Sorry to keep

I6C7GAL2

1 pressing this but if we can get the bonds back to MS Wool Group
2 statement it will be very helpful for the Burnham change of
3 control app with FINRA. Change of control requires personal
4 statement. Devon Archer."

5 Q. E-mail from Jason Sugarman the same day to Devon Archer
6 copying jason@holmbycompanies.com, regarding the VL assurance
7 bonds.

8 "It's fine. David already agreed. No issue."

9 Ms.Sheinwald, if you could turn next to Government
10 Exhibit 2092, and beginning with the e-mail on the bottom.
11 It's an e-mail from Devin Wicker on May 28, 2015 -- I'm
12 sorry -- I think -- beginning with the e-mail at the very
13 bottom on May 28, 2015, Devon Archer wrote: "Devon, how are we
14 tracking here? Do we have everything on our side? And,
15 secondly, is there anything else we need from MS? Thanks,
16 Devon."

17 A. Devin Wicker then wrote on May 28, 2015 to Iris Gomez,
18 Devon Archer, Andrew Godfrey, Sebastian Momtazi, Kyle Wool,
19 Jerome Niles, Joseph Fereno and Al Dedona: "I believe we are
20 close to being open if not open already. Regards, Devin
21 Wicker."

22 Q. E-mail from Holmby to Devon Archer regarding Bonwick
23 account: "Huge."

24 I'm sorry, Ms.Sheinwald, if you could go back to the
25 e-mail on the bottom of the second page here which we omitted,

I6C7GAL2

1 e-mail from Devon Archer on May 28, subject: Bonwick account.
2 To Devin Wicker, Kyle Wool and Iris Gomez, copying Andrew
3 Godfrey and Sebastian Momtazi:

4 "Kyle, as discussed we need to open an account for one
5 of our operating subsidiaries Bonwick. We plan to fund the
6 account immediately and request we move quickly to execute.

7 "Devin runs Bonwick and is copied here. He can
8 provide all of the relevant details for the account opening.

9 "Many thanks. Best, Devon."

10 Ms.Sheinwald, if we could turn next to Government
11 Exhibit 2093, and if you could put page 1 on the left next to
12 page 2 on the right. E-mail from Bevan Cooney on May 28, 2015
13 to Sebastian Momtazi, subject: Cooney bond power. Attached
14 document May 28, 2015.

15 A. The attachment is an irrevocable stock or bond power for
16 value receiver, the undersigned does (or do) hereby sell,
17 assign and transfer to, printed name, Bonwick Capital Partners
18 LLC, Social Security or taxpayer ID number 27-4436830, in the
19 principal amount of \$5 million, dated May 28, 2015." Signed.
20 Signature.

21 Q. If you could turn next to Government Exhibit 2094.

22 A. This is an e-mail from Bevan Cooney to Sebastian Momtazi
23 dated Friday, May 29, 2015: "I authorize you to sign on my
24 behalf on my Wakpamni bonds Sebastian. Thanks, Devon Bevan."

25 Q. And, Ms.Sheinwald, if you could next turn to Government

I6C7GAL2

1 Exhibit 2095. and beginning with the e-mail on the bottom from
2 Freddie Rivera on May 29 to Kyle Wool, Jerome Niles, Iris Gomez
3 and Joseph Fereno. Subject is bond certificate received.

4 "Good afternoon all, just wanted to inform you that we
5 received the below bond certificate today. It has been
6 deposited into the account as of May 29, 2015 and should
7 reflect in the account by Monday. The May statement should
8 also show the deposit for the clients record.

9 "Account received: Bonwick Capital Partners LLC.

10 "Issuer: Wakpamni Lake Community Corporation.

11 "Quantity: \$5 million.

12 "Issue date: October 9, 2014.

13 "Registered to: Bevan Troy Cooney Family Trust."

14 A. On the same day Kyle Wool then forwarded that note to Devon
15 Archer and Sebastian Momtazi texting: "Done."

16 Q. And on the same day, e-mail from Devon Archer to
17 jason@holmbycompanies.com, forward bond certificate received.
18 Devon D Archer.

19 And, Ms.Sheinwald, if you could turn next to
20 Government Exhibit 2098 and beginning with the e-mail on page
21 2.

22 A. On July 1, 2015 Devon Archer wrote: "Seb, and Andrew and
23 Kyle, can we all get on the same page about what we need to
24 transfer funds to Bonwick for their requirements today. Seb, I
25 believe you were working on some LOA but I am not sure if

I6C7GAL2

1 Bonwick has not responded or they're unclear on their request.

2 Let me know what I need to do. Thanks. D. Devon D. Archer."

3 Q. On July 1 Kyle Wool wrote: "Where we are is we needed the
4 proper legal ownership docs for Bonwick, now we have it. Then
5 we needed the legal ownership doc for Burham, since Burham owns
6 a piece of Bonwick. Marcel just sent us a doc that I think
7 looks good but I need my internal guy to sign off on it. I
8 think that should do it. I will know by 8 a.m. Once approved
9 I will journal.

10 "Sorry I can't do it today as the back office guys
11 punch out at five. Going forward let's try not to start this so
12 late in the day but also really this should be almost the last
13 of the docs."

14 A. And then Kyle Wool responded on the same day to Devon
15 Archer, Sebastian Momtazi and Andrew Godfrey: "Should be
16 good."

17 Q. E-mail from Devon Archer to jason@holmbycompanies.com, same
18 day forward Bonwick transfer: "Looks like we're resolved.
19 Confirm in the a.m. Devon D. Archer."

20 And, Ms. Sheinwald, if you could turn next to
21 Government Exhibit 2099.

22 On July 6 Jason Galanis wrote: "Attached backup of
23 WLCC Tombstone."

24 A. Then Devon Archer wrote to Jason Galanis and Sebastian with
25 the subject: Let's talk about the attached and all the others

I6C7GAL2

1 we need to do.

2 "Yes. We need to get on there." Devon Archer.

3 Q. If you could turn next to Government Exhibit 2294, e-mail
4 from Bevan Cooney on February 10, 2015 to Tina VanderZee and
5 Mark Cohen, subject: Cooney bonds account.

6 A. That message was then forwarded from Bevan Cooney to Jason
7 Galanis on October 1, 2015.

8 Q. And, Ms.Sheinwald, if you could pull up the third page of
9 this exhibit, and if you could put the third page next to the
10 fourth page, portfolio snapshot. Portfolio value: \$5,523,600.
11 Holdings by Portfolio: Wakpamni Lake Community Corporation. S
12 D SPL LTD REV taxable town center development series A.

13 And, Ms.Sheinwald, if you could turn next to
14 Government Exhibit 2119, and we will start with the e-mail on
15 the bottom from Michael Earlywine on November 25, 2015 to John
16 Burnham, Ron Geffen, Marcel Devine, copying Devin Wicker, Al
17 Dadona, Andrew Godfrey, Devon Archer and Sebastian Momtazi:

18 "Regarding 931130AC muni is now priced as well!!

19 "23rd - 98.399, 24th - 98.401."

20 A. On the same day that e-mail was forwarded from Devon Archer
21 to Mark Waddington: "Mark, though these are to be
22 replaced/returned to Calvert I wanted today share the below.
23 Best, Devon."

24 Q. On November 25, Mark Waddington wrote: "interesting, do
25 you know what price source is? If there are any real bids out

I6C7GAL2

1 there in range of 98ish price shown, let's take it.

2 "Definitely higher than what my price model comes
3 back. I showed 96.151 as at 10/31 and I showed both credit
4 spread widening and UST yield increases. At high level, I'd
5 have less than 94 with my model. This price is treating as BB,
6 I've assess rating at B plus or so (mid of B and BB). If
7 reputable price source, I'd like to use it at year end.
8 Hopefully we won't need it."

9 A. On the same day Devon Archer then replied to Mark
10 Waddington, cc'ing David Ezekiel: "Agreed. I think the
11 consensus is we would like to return these bonds to the lender
12 and beneficial owner in the quickest orderly manner possible.
13 Devon Archer."

14 Q. E-mail from Mark Waddington the same day to Devon Archer:
15 "give me a call when you have a chance."

16 And, Ms.Sheinwald, if we could turn next to Government
17 Exhibit 2298, beginning with the e-mail in the middle of the
18 page from Bevan Cooney on February 28, 2016 to
19 btcooney@gmail.com, subject: Document.

20 A. Then Bevan Cooney sent on February 28, 2016 to Eric Fulton:
21 "Below is the secured loan agreement for the bonds. I will
22 send down the rest of the file its too big to scan."

23 Q. And, Ms.Sheinwald, if you could turn to the second page of
24 this document, the first page of the attachment.

25 "This secured loan agreement is made and enter into as

I6C7GAL2

1 of 2nd day of October 2014, by and between Bevan Troy Cooney
2 Family Trust, a California irrevocable trust, care of Fulton &
3 Meyer, and Calvert Capital Partners G.P., a United Kingdom
4 general partnership, with its principal offices located at care
5 of Thorsdale Fiduciary and Guaranty, 2856 Hayden Creek Terrace,
6 Henderson, Nevada."

7 Q. And if you could blow up the bottom portion, number one,
8 loan:

9 "Secured party hereby lends to borrower, receipt of
10 which is hereby acknowledged, the sum of \$5 million, payable to
11 the borrower's legal counsel trust account in certain funds
12 concurrent with the execution of this agreement and the other
13 documents/instruments referred to below. The proceeds shall be
14 used to acquire \$5 million of municipal bonds issued by
15 Wakpamni Lake Community Corporation in connection with a
16 private placement (which municipal bond shall herein after be
17 referred to as the Wakpamni bonds)."

18 And, Ms.Sheinwald, if you could turn next to
19 Government Exhibit, next and finally to Government Exhibit
20 3272.

21 A. This is an e-mail dated February 26, 2016 from Bevan Cooney
22 to Vanessa Siegel, subject: 1920 Bel Air Road document.

23 "Vanessa I found this file for my taxes last year.
24 Thorsdale loaned me this money for a short period of time. The
25 money went through my CNB account and to Camden Escrow in

I6C7GAL2

1 Beverly Hills. It was a failed real estate transaction."

2 Q. From Vanessa Siegel to Bevan Cooney, copying Matthew
3 Fillman and Eric Fulton: "OK thanks Bevan."

4 And, Ms. Sheinwald, if you could turn to the attachment
5 here on the second page.

6 A. This is a letter headed Thorsdale Fiduciary & Guaranty
7 dated January 7, 2015 to the Bevan Cooney Family Trust, care of
8 Bevan Cooney, trustee:

9 "Dear Bevan, you've requested information for your tax
10 preparation. This letter confirms our earlier agreement
11 regarding the loan made to your family trust on November 12,
12 2014 for a proposed real estate investment. This letter
13 confirms that the loan of \$3,895,000 was made for the purposes
14 of a joint venture on a residential real estate investment.
15 You funded escrow on November 13, 2015 with the proceeds of the
16 loan made to you. The transaction to acquire the Bel Air
17 property did not work out as expected for reasons beyond your
18 or our control.

19 "You were instructed by Thorsdale as the agent for the
20 lender, Calvert, to cancel escrow and wire the proceeds held in
21 escrow to the attorney/client trust account of counsel to
22 Thorsdale, which you did prior to year end. Accordingly, when
23 you completed the wire, your loan was paid off and the proposed
24 venture terminated.

25 "Let us know if you require anything else for your

I6C7GAL2

1 financial records or accountants.

2 With regards, Thorsdale Fiduciary & Guaranty Company
3 Ltd., " Signed Jason Galanis, managing director.

4 MS. TEKEEI: Thank you, Ms. Sheinwald. Thank you
5 Special Agent Kroll.

6 MR. QUIGLEY: The government calls Daniel Turney.

7 THE COURT: And I will see the lawyers at sidebar for
8 a minute while the witness is coming in.

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I6C7GAL2

(At the sidebar)

THE COURT: I'm going to take Mr. Schwartz's suggestion to wait to decide on 955 until after the evidence regarding the meetings is coming in. You can still offer it, as you suggested, Mr. Quigley, subject to connection, but, as you suggested, not publish it to the jury.

MR. QUIGLEY: OK.

THE COURT: And then I will make my decision after the evidence comes in. So, you will offer it, and I will reserve decision.

MR. QUIGLEY: Can I ask him -- without publishing it to the jury -- what he understands op co to mean? Op co is referenced in the document, and he will say that's operating capital.

THE COURT: I think you could ask that. It will be a little out of context, but yes.

MR. QUIGLEY: Just to make a record.

MR. SCHWARTZ: I'm showing you Exhibit 955 for identification; what do you understand the term op co to refer to? I have no problem with that.

THE COURT: OK.

MR. SCHWARTZ: Just so I'm preserved, we are all agreed I don't have to object when they offer it.

THE COURT: That's correct. I won't ask you either way. And, as I said, I will reserve ruling on the

I6C7GAL2

1 admissibility.

2 MR. QUIGLEY: OK. And, your Honor, I think in terms
3 of more generally your questions about Atlantic, I mean we have
4 another set of e-mails that relate to the Atlantic transaction.

5 In terms of your questions about how Atlantic fits
6 into the whole thing, we have another set of e-mails that we're
7 going to read in in the next couple of days that are focused on
8 the Atlantic transaction. So, if you wanted to defer even
9 after that, that would be --

10 THE COURT: OK. So either orally or in writing you
11 will tell me.

12 MR. QUIGLEY: We can do it at the close of evidence.

13 THE COURT: Exactly. And then I'll decide.

14 MR. QUIGLEY: Thank you.

15 (Continued on next page)

I6CJGAL3

Turney - direct

1 (In open court)

2 DIRECT EXAMINATION

3 DANIEL TURNEY,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. QUIGLEY:

8 Q. Good morning, Mr. Turney.

9 A. Good morning.

10 Q. Mr. Turney, did you ever work at an investment adviser firm
11 called Hughes Capital Management?

12 A. I did.

13 Q. When did you work there?

14 A. From the Spring of 2005 until the spring of 2011 and then
15 again from December 2013 until January of '16.

16 Q. 2016?

17 A. I believe, yes, yes.

18 Q. Now, during your time at Hughes, did you become familiar
19 with bonds issued by the Wakpamni Lake Community?

20 A. Yes.

21 Q. How did you become familiar with those bonds?

22 A. The people that purchased the firm wanted to purchase those
23 bonds and put them in the portfolios of --

24 Q. Of Hughes' clients?

25 A. Yes.

I6CJGAL3

Turney - direct

1 Q. Let's back up a second. You said you initially worked at
2 Hughes from 2005 to 2011?

3 A. Correct.

4 Q. What role did you play at Hughes during those years?

5 A. Ms. Hughes hired me originally as her administrative
6 assistant, and shortly thereafter she promoted me to
7 operations, and I worked as an operations associate until I
8 left in 2011.

9 Q. You said Ms. Hughes. Who was Ms. Hughes?

10 A. Frankie Hughes, she owned the company.

11 Q. What did you do as the operations assistant?

12 A. Operations was responsible for trade settlement, accounting
13 and bookkeeping, client reporting.

14 Q. Why did you leave Hughes in 2013?

15 A. I moved to San Francisco.

16 Q. Did you return to work at Hughes?

17 A. Yes.

18 Q. Where was Hughes located?

19 A. Alexandria, Virginia.

20 Q. When did you move back to Virginia and start working at
21 Hughes again?

22 A. December of '13.

23 Q. What role did you have when you first got back to Hughes?

24 A. Ms. Hughes called me in that summer and asked me to come
25 back and be her firm administrator. She had a firm

I6CJGAL3

Turney - direct

1 administrator currently, but was having difficulty with that
2 individual, so she brought me back under the guise of
3 operations again, and then when she terminated the firm
4 administrator, she put me in that position.

5 Q. Can you describe your responsibilities as the firm
6 administrator.

7 A. The firm administration is responsible for a broad variety
8 of things; employee benefits, payroll, insurance, taxes,
9 accounts payable and receivable, office administration.

10 Q. Were you involved in providing investment advice to Hughes
11 clients?

12 A. No.

13 Q. Were you involved in making investment decisions for Hughes
14 clients?

15 A. No.

16 Q. Is it fair to say you had an administrative role?

17 A. Correct.

18 Q. As of August 2014, how many people worked at Hughes?

19 A. Six or seven.

20 Q. You said Hughes had an office in Alexandria, Virginia?

21 A. Yes.

22 Q. At that time did it have any other offices?

23 A. No.

24 Q. You mentioned Frankie Hughes as the owner of Hughes?

25 A. Correct.

I6CJGAL3

Turney - direct

1 Q. In August of 2014, was Hughes sold to someone else?

2 A. It was.

3 Q. When did you learn that the firm had been sold?

4 A. The day she sold it.

5 Q. Was that a surprise?

6 A. It was.

7 Q. What was your understanding of who the new owner or owners
8 were?

9 A. The new owners, I was told, were Michelle Morton and
10 Richard Deary.

11 Q. You said Michelle Morton and Richard Deary?

12 A. Correct.

13 Q. Before August of 2014, had you met Michelle Morton before?

14 A. Briefly when I got back in December of 2013, she came into
15 the office to meet with Frankie, so I was introduced to her. I
16 shook her hand and offered her a cup of coffee, but that was
17 the extent of it.

18 Q. Now, shifting back to the firm in August 2014, did you meet
19 anybody else associated with the new owners?

20 A. I met Gary Hirst, and there was another gentleman there who
21 I did not meet personally, but I saw him.

22 MR. QUIGLEY: Can you show for the lawyers and the
23 witness and the Judge what has been marked for identification
24 as Government Exhibit 2609.

25 Q. Mr. Turney, do you recognize this document?

I6CJGAL3

Turney - direct

1 A. I do.

2 Q. What is this?

3 A. This is an email to me from Michelle Morton.

4 MR. QUIGLEY: This is already in evidence. The if,
5 not the government offers Government Exhibit 2609.

6 THE COURT: It will be admitted.

7 (Government's Exhibit 2609 received in evidence)

8 MR. QUIGLEY: Can we publish it to the jury.

9 BY MR. QUIGLEY:

10 Q. Who is this email from Mr. Turney?

11 A. Michelle Morton.

12 Q. Who is it to?

13 A. It is to me, with a CC to Ms. Hughes and Richard Deary.

14 Q. What is the date on the email?

15 A. August 11th, 2014.

16 Q. Is this around the time that Hughes closed?

17 A. Yes, shortly thereafter.

18 Q. What is the subject of the email?

19 A. Gary Hirst and Hugh Dunkerley.

20 Q. Had you met Gary Hirst or Hugh Dunkerley or heard of them
21 before this email?

22 A. No.

23 Q. What does it say in the email about Gary Hirst's role?

24 A. She introduces him as our portfolio management consultant.

25 Q. Focusing on the second paragraph, do you see where it says

I6CJGAL3

Turney - direct

1 Hugh Dunkerley, who represents our investment adviser?

2 A. Yes.

3 Q. What did you understand Ms. Morton to mean by represents
4 our investment adviser?

5 A. Ms. Morton had said she had a group of investigators who
6 had financed the purchase of the firm.

7 Q. Over time what, if anything, did Ms. Morton tell you who
8 her investors were?

9 A. Very little. The never mentioned their name short of Mr.
10 Dunkerley, so I didn't know who they were. They said they were
11 great people, that they ran in high social circles, they knew
12 politicians.

13 Q. Around the the time of this email did you, in fact, meet
14 with Mr. Hirst?

15 A. Yes.

16 Q. What was the context of that meeting?

17 A. Our office was set up as what we called a pit, so all of
18 the employees sat in an open area with low walls, and Mr. Hirst
19 and Mr. Deary came back to the back office to talk with
20 portfolio managers, so I was present for that conversation.

21 Q. You mentioned portfolio managers. Who were the portfolio
22 managers at the time?

23 A. Michael Allen and Justin Malkin.

24 Q. Had they been preexisting employees of Hughes?

25 A. Yes.

I6CJGAL3

Turney - direct

1 Q. You said you were present for the discussion. What was the
2 context of the discussion?

3 A. Mr. Deary and Mr. Hirst were interested in the guidelines
4 for the portfolios, what the portfolios could hold, their
5 restrictions, the parameters about what we could invest in.

6 Q. Did you have any involvement in checking whether securities
7 fit into the client's investment guidelines?

8 A. No.

9 Q. Were you familiar with the details of the clients'
10 investment guidelines?

11 A. I was tertiarily familiar with them. I read them, but, no.

12 Q. How would you describe the types of investments that Hughes
13 Capital made on behalf of his clients at this time?

14 A. We were a fixed income asset manager. We had institutional
15 clients, so corporations, foundations, endowments, Taft Hartley
16 plans.

17 Q. By "fixed income," you mean bonds?

18 A. Correct.

19 Q. Approximately how many days did Mr. Hirst spend at Hughes'
20 office?

21 A. Maybe three.

22 Q. Just to be clear, other than seeing Mr. Dunkerley that one
23 time, you never saw him after that?

24 A. No.

25 Q. Where did Gary Hirst go after those three days?

I6CJGAL3

Turney - direct

1 A. I was told he went to Florida.

2 Q. Around this time, mid-August, late August, 2014, did you
3 learn about the Native American bonds we discussed earlier?

4 A. Yes.

5 Q. How did you first learn about them?

6 A. I only heard about it through conversations between the
7 portfolio managers. They had separate private conversations
8 with Michelle and Richard, and so when they would come back
9 into the pit again, I would hear, overhear their conversations
10 about it.

11 Q. Generally what was your role in the purchase of those
12 bonds?

13 A. I executed or facilitated the settlement of the trade.

14 MR. QUIGLEY: Can we show to the witness, the Judge
15 and the lawyers Government Exhibit 904.

16 A. I'm there.

17 Q. Do you recognize this email?

18 A. Yes.

19 Q. What is it?

20 A. It is a conversation regarding how the trade is going to
21 settle.

22 MR. QUIGLEY: The government offers Government Exhibit
23 904.

24 MR. SCHWARTZ: No objection.

25 MS. NOTARI: No objection.

I6CJGAL3

Turney - direct

1 MR. TOUGER: No objection.

2 THE COURT: It will be admitted.

3 (Government's Exhibit 904 received in evidence)

4 MR. QUIGLEY: Can we publish it to the jury.

5 Can we go to the page ending in Bates 282, second page
6 and blow up the email from Gary Hirst.

7 BY MR. QUIGLEY:

8 Q. Mr. Turney, can you read this email.

9 A. Hi, Daniel. I just called U.S. Bank and I believe the
10 physical delivery is the way that we should go. Trying to do
11 the transaction through DTC would result in considerable delays
12 at this time, maybe as much as a couple of weeks.

13 Continue?

14 Q. Yes, please.

15 A. U.S. Bank can make physical delivery immediately and the
16 custodians can then dematerialize the bonds after they have
17 received them. Thanks.

18 Q. What do you understand Mr. Hirst to mean by physical
19 delivery?

20 A. So trades these days are executed in what's called DVP,
21 delivery versus payment, so it is an electronic transaction
22 either through the DTC or over the fed wire where it happens
23 immediately. It is literally a delivery versus payment.

24 So the bond will be delivered from the broker to the
25 custodian, and the custodian will deliver the cash back to the

I6CJGAL3

Turney - direct

1 broker, and it happens immediately and automatically.

2 Q. What is physical delivery?

3 A. Physical delivery is a physical delivery of the bond, a
4 paper bond brought to the custodian physically.

5 MR. QUIGLEY: Go to the first page of the document and
6 look at, Mr. Turney, the reply to Mr. Hirst. Just highlights
7 the first paragraph. That is fine.

8 BY MR. QUIGLEY:

9 Q. How do you respond to Mr. Hirst?

10 A. I told him we have never done a physical delivery before
11 and I would have to work on figuring out how to do it.

12 Q. How long had you been working at Hughes Capital at this
13 time?

14 A. I had been working at whose since 2005 again until 2011.
15 What is that, six years, but nine years altogether.

16 Q. You had never done a physical delivery?

17 A. No.

18 Q. Go to the last page of the attachment to this document.
19 One up. Sorry.

20 Do you recognize this, Mr. Turney?

21 A. Yes.

22 Q. What is this?

23 A. This is a break-out of the allocation of the amounts that
24 would go into each account.

25 Q. These under client name, are these entities all clients of

I6CJGAL3

Turney - direct

1 Hughes Capital Management?

2 A. Yes.

3 Q. Clients where Wakpamni bonds would be placed?

4 A. Yes.

5 Q. Are you familiar with a trade blotter or purchase blotter?

6 A. Yes.

7 Q. What is that?

8 A. It basically is an allocation of the trade, so if you buy a
9 security and you need to allocate it to multiple portfolios,
10 you put it in what is called a blotter, and it line-items each
11 account and the amounts that are supposed to go in, similar to
12 this attachment.

13 MR. QUIGLEY: Can we show for the witness the lawyers
14 and Judge Government Exhibit 2616.

15 Q. Do you recognize this document, Mr. Turney?

16 A. Yes.

17 Q. What is it?

18 A. This is an email conversation regarding allocation of the
19 trade.

20 MR. QUIGLEY: Government offers Government Exhibit
21 2616.

22 THE COURT: Any objection?

23 MR. TOUGER: No objection.

24 MS. NOTARI: No objection.

25 MR. SCHWARTZ: No objection.

I6CJGAL3

Turney - direct

1 (Government's Exhibit 2616 received in evidence)

2 MR. QUIGLEY: Please publish it to the jury. Go to
3 the bottom email from Michelle Morton, August 20, 2014.

4 BY MR. QUIGLEY:

5 Q. Who is that email from, Mr. Turney?

6 A. Michelle Morton.

7 Q. What is the date?

8 A. August 20, 2014.

9 Q. Who is it to?

10 A. It is to Jason Galanis, Richard Deary and Gary Hirst.

11 Q. Have you ever met Jason Galanis?

12 A. No.

13 Q. At this time, did you have any understanding of who he was?

14 A. No.

15 Q. Did he have any official role at Hughes?

16 A. No.

17 Q. Can you read the bottom of that email beginning hello.

18 A. Please review?

19 Q. Yes.

20 A. Please review for accuracy. Gary, if it looks okay to you,
21 I have set up a place for you to sign. We have just got to get
22 it to Daniel tomorrow. I will have a copy as well. Let's not
23 send it in until -- let's not send it until I get -- let's not
24 send it until I get because the office because he will be
25 confused and I prefer to explain the denominations to him

I6CJGAL3

Turney - direct

1 myself. It is a simple but important doc. Jason, it is very
2 important that you sign off on this. I want to make sure the
3 information is accurate.

4 Q. Eventually at the top of the chain did you get a copy of
5 this trade blotter?

6 A. Yes.

7 MR. QUIGLEY: Please see the attachment briefly and
8 publish it to the jury.

9 BY MR. QUIGLEY:

10 Q. Again are these the clients of Hughes' accounts the bonds
11 are going to be placed?

12 A. They are.

13 Q. Mr. Turney, are you familiar with the term trade ticket?

14 A. Yes.

15 Q. What is a trade ticket?

16 A. A trade ticket is a ticket that is generated by the
17 portfolio manager and given to the operations associate in
18 order to -- it has got all the details in it, finer details
19 used to settle the trade.

20 Q. Do the trade tickets need to be signed for Hughes to
21 purchase these bonds?

22 A. Yes, they did.

23 Q. Who ultimately signed the trade tickets?

24 A. In this instance, Gary Hirst did.

25 Q. Normally at who, who would have signed the trade tickets?

I6CJGAL3

Turney - direct

1 A. The portfolio manager.

2 Q. Michael Allen and Justin Malkin?

3 A. Correct.

4 Q. Did they sign trade tickets for the Wakpamni bonds?

5 A. No.

6 Q. Did you have an understanding why they didn't sign?

7 A. So when you --

8 MR. TOUGER: Objection.

9 THE COURT: Sustained.

10 BY MR. QUIGLEY:

11 Q. Do you know whether they were ever asked to sign?

12 A. Sorry?

13 Q. Do you know whether they were ever asked to sign?

14 A. Whether they were asked to sign?

15 Q. Yes.

16 A. Yes.

17 Q. Did they sign?

18 A. No.

19 Q. Did Michelle Morton ask whether it was possible for you to
20 sign a trade ticket?

21 A. She did.

22 Q. What did you say?

23 A. I told her absolutely not.

24 Q. Why was that?

25 A. I am not a portfolio manager. I didn't have the authority

I6CJGAL3

Turney - direct

1 to do so.

2 Q. Where was Gary Hirst at the time?

3 A. Again I understood he was in Florida.

4 Q. You mentioned he was the one who signed the trade tickets.

5 How did he get the trade tickets to sign?

6 A. I either faxed or emailed them to him.

7 Q. Did he send them back?

8 A. Yes.

9 MR. QUIGLEY: Can we pull up for the witness and the
10 lawyers and Judge, Government Exhibit 813.

11 Q. Do you recognize that, Mr. Turney?

12 A. Yes.

13 Q. What is that?

14 A. This is an email between myself and Gary Hirst.

15 Q. Attaching the trade tickets?

16 A. Correct.

17 MR. QUIGLEY: The government offers 813.

18 THE COURT: Any objection?

19 MR. TOUGER: No objection.

20 MR. SCHWARTZ: No objection.

21 THE COURT: It will be received.

22 (Government's Exhibit 813 received in evidence)

23 BY MR. QUIGLEY:

24 Q. Focusing on the top email in the chain, who is that from?

25 A. From Gary Hirst.

I6CJGAL3

Turney - direct

1 Q. What is the date?

2 A. August 22, 2014.

3 Q. What does Mr. Hirst say?

4 A. He is returning the trade tickets as requested. Here are
5 the trade tickets, signed as requested.

6 MR. QUIGLEY: If you could just scroll through the
7 attachments, Ms. Shinewald.

8 Q. Mr. Turney, what do each of these represent?

9 A. These are the trade tickets.

10 Q. Each Hughes client had an individual trade ticket signed on
11 their behalf?

12 A. Correct.

13 Q. What did you do after you got these trade tickets?

14 A. I facilitated the settlement.

15 Q. What do you mean by that?

16 A. So it was actually like I had mentioned in that previous
17 email, a physical delivery was something that was new to me,
18 and so it took a process of figuring out what the custodian
19 exactly, the logistics of how to do it. Even some of the
20 custodians weren't even familiar with how to accept a physical
21 delivery, so it was a process but, yes.

22 Q. You mentioned something named Justin Malkin. What did he
23 do the day the trade was executed?

24 A. He quit.

25 Q. Quit?

I6CJGAL3

Turney - direct

1 A. Correct.

2 Q. Was the trade ultimately able to settle?

3 A. It was.

4 Q. Did all the bonds settle at the same time?

5 A. No. There were several of them that settled ex post facto.

6 Q. Did you talk with Michelle Morton after the trade settled?

7 A. I did.

8 Q. What did you say to her?

9 A. I told her that that was an incredibly stressful situation,
10 and I asked her, I had told her never to do that to me again.

11 Q. What was stressful about it for you?

12 A. It was stressful in kind of two ways:

13 One, as I had mentioned, physical delivery was
14 something I hadn't done before, and I had, I don't know, a
15 dozen trades to get settled in a very short period of time, so
16 that was the stress of that as well as the stress from just the
17 general conversation in the office, then the negativity that
18 the portfolio managers were discussing about the bonds.

19 Q. About the bonds?

20 A. Correct.

21 Q. After the bonds were issued, in your role at Hughes, did
22 you receive any correspondence or communications from Hughes
23 clients?

24 A. Yes.

25 Q. Based on receiving those, how did clients of Hughes react

I6CJGAL3

Turney - direct

1 once they learned the bonds was placed in their accounts?

2 A. Negatively across the board.

3 MR. QUIGLEY: Can we look at just for the Judge, the
4 witness and the lawyers Government Exhibit 2625.

5 MR. TOUGER: No objection.

6 THE COURT: Admitted.

7 (Government's Exhibit 2625 received in evidence)

8 MR. QUIGLEY: May we publish it.

9 BY MR. QUIGLEY:

10 Q. Focusing on the bottom email in this chain from you to a
11 man named Richard Baker, do you see that?

12 A. Yes, I do.

13 Q. Can you read that email.

14 A. Good afternoon, Mr. Baker. As discussed, I will follow up
15 with Northern Trust and did verify that the bond was physically
16 delivered to them on August 27th. The delivering agent was
17 U.S. Bank. If you need anything further, please let us know.

18 Q. When you referenced the bond in here, what was the bond you
19 were referring to?

20 A. That is the Wakpamni bond.

21 Q. Where did Mr. Baker work?

22 A. He worked for WSSC, I believe. Excuse me. The Washington
23 Suburban Sanitation Commission, a client.

24 Q. Was that one of the clients into whose account the bond --

25 A. It was, yes.

I6CJGAL3

Turney - direct

1 Q. How does he respond to the email?

2 A. He asked, tells us to immediately cease trading.

3 Q. Jump ahead a little bit to the spring of 2015. Did Hughes
4 acquire another investment adviser at that time?

5 A. Yes.

6 Q. What was the name of that company?

7 A. Atlantic Asset Management.

8 Q. Where was Atlantic located?

9 A. Connecticut.

10 Q. What, if anything, did Morton say to you about how she
11 bought Atlantic?

12 A. She said it was another round of funding from the
13 investors.

14 MR. QUIGLEY: Can we show for the witness, the lawyers
15 and the Judge, Government Exhibit 955.

16 Q. Do you see this email, Mr. Turney?

17 A. I do.

18 Q. Do you recognize it?

19 A. Yes.

20 Q. Directing your attention to the second line of the email in
21 the middle of the page where there is a reference to OP CAP,
22 what do you understand that reference to OP CAP mean?

23 A. That is our operating capital.

24 MR. QUIGLEY: We offer this subject to our previous
25 discussion, to connection.

I6CJGAL3

Turney - direct

1 THE COURT: Yes, and the rulings we discussed. Thank
2 you.

3 MR. QUIGLEY: You can take that down Ms. Shinewald.

4 BY MR. QUIGLEY:

5 Q. You see in the document the reference to the buy?

6 A. Yes.

7 Q. What do you understand the buy to be a reference to?

8 A. I believe that to be the purchase of Atlantic.

9 Q. You can take that down.

10 After the acquisition of Atlantic, did you know
11 someone named Don Trotter?

12 A. Yes.

13 Q. Who is Mr. Trotter?

14 A. He worked at Atlantic.

15 Q. Where was he based?

16 A. Kansas City, I believe.

17 Q. After the purchase of Atlantic, did you learn anything
18 about the purchase of additional Wakpamni bonds?

19 A. I did.

20 Q. What did you learn?

21 A. So I didn't I learn about them until probably June of that
22 year, two days before they were supposed to be sold to a
23 different broker or to a broker.

24 Q. These were additional bonds that had been purchased on
25 behalf of Atlantic clients?

I6CJGAL3

Turney - direct

1 A. Yes.

2 Q. What was your reaction, learning those bonds had been
3 purchased?

4 A. I was stunned.

5 Q. Why was that?

6 A. A, I had no previous knowledge of them and -- so they had
7 purchased the security in Connecticut in probably April, and I
8 found out about it in June, and as the firm administrator, I am
9 supposed to know basically everything that goes on.

10 Q. Was there a second reason. You said there were two?

11 A. Well, there had always been kind of a cloud over the
12 Wakpamni bonds, so I was surprised in general we had purchased
13 more.

14 Q. Do you still work at Hughes?

15 A. No.

16 Q. Does either Hughes or Atlantic still exist?

17 A. They do not.

18 Q. What happened?

19 A. They were put into receivership by the SEC in December of
20 '15.

21 Q. When were you first interviewed by the government in this
22 case, approximately?

23 A. In the spring of 2016.

24 MR. QUIGLEY: One moment, your Honor. No further
25 questions.

I6CJGAL3

Turney - cross

1 THE COURT: Any cross-examination? Mr. Hassan.

2 CROSS EXAMINATION

3 BY MR. HASSAN:

4 Q. Good morning.

5 A. Good morning.

6 Q. I just have a few questions for you. I am Abraham Hassan,
7 Attorney for Bevan Cooney along with Ms. Notari.

8 So you started working with Hughes in what was it,
9 2005?

10 A. Correct.

11 Q. You worked there for several years?

12 A. I did.

13 Q. You really developed a career there?

14 A. I was trying to, yes.

15 Q. You were good at your job?

16 A. I would like to think so, yes.

17 Q. You were promoted?

18 A. Yes.

19 Q. You were in charge of organizing things, logistics?

20 A. Correct.

21 Q. And I take it you took pride in that work?

22 A. I did.

23 Q. At a certain point you went west and moved to California
24 for a while?

25 A. Ah-huh. That is correct.

I6CJGAL3

Turney - cross

1 Q. You worked in similar fields doing similar types of work
2 out there?

3 A. Yes, I worked for a financial investment firm in San
4 Francisco.

5 Q. So your career really hadn't been advanced and developed?

6 A. I was hoping to, yes.

7 Q. But at a certain point Frankie Hughes needed you back?

8 A. She asked for me to come back, yes.

9 Q. And brought you back to Hughes Capital?

10 A. Yes.

11 Q. So you moved back east and you really took hold of
12 organizing, setting the ship straight again?

13 A. Correct.

14 Q. You were promoted?

15 A. As I had mentioned, she had a firm administrator at the
16 time that she brought me back, but she over the course of her
17 wooing he back to the East Coast, the intent was to hire me as
18 her firm administrator, but she needed some kind of time to
19 ease me into that, and so she brought me back on paper as the
20 operations associate.

21 Q. So she helped you develop your career further and take on
22 more responsibility?

23 A. Exactly.

24 Q. At this time you had done that, you had reorganized things
25 and things were in a good place?

I6CJGAL3

Turney - cross

1 A. They were.

2 Q. You didn't see, you didn't think the company was being
3 sold?

4 A. I had no idea.

5 Q. You didn't understand why it was being sold?

6 A. Ms. Hughes was close to retirement and she told me as part
7 of the process of bringing me back, that she expected to
8 continue to own the firm for a number of three to five years,
9 so I expected to have three to five years worth of firm
10 administration experience under my belt at the time that she
11 retired, yes.

12 Q. It is fair to say when it actually was sold, you were taken
13 aback?

14 A. I was.

15 Q. You weren't expecting and you weren't consulted on it?

16 A. That is correct.

17 Q. After it was sold, new people started to show up?

18 A. Yes.

19 Q. You mentioned Michelle Morton?

20 A. Yes.

21 Q. Gary Hirst?

22 A. Yes.

23 Q. And it is fair to say that some of their behavior gave you
24 pause?

25 A. Correct.

I6CJGAL3

Turney - cross

1 Q. Michelle Morton acted -- she would disappear for weeks at a
2 time?

3 A. There were times where she was absent, yes.

4 Q. And she had the company paying for her hotel bills?

5 A. She did.

6 Q. Gary Hirst would ask people to do things that they weren't
7 comfortable with?

8 A. I never heard him ask anyone to do things, so that would be
9 hearsay.

10 Q. To make trades that you weren't -- he asked you to sign
11 things that you didn't want to sign?

12 A. No, he did not.

13 Q. Gary Hirst was often rude and he was wanting to get a
14 paycheck from you?

15 A. "Often" is the wrong term. I had a brief conversation with
16 him, as I had mentioned when I first came back, and I had
17 subsequent brief follow-up conversations with him via email and
18 one phone call after he left -- or went back to Florida.
19 Excuse me.

20 Q. These new people, though, that showed up, again like I said
21 before, they made you -- you weren't comfortable with them?

22 A. I don't know if, "wasn't comfortable with them" was quite
23 the word. They were new people, and so it takes some time to
24 get to know folks.

25 Q. You were told that the new investors were high society

I6CJGAL3

Turney - cross

1 people with big connections, right?

2 A. That is correct.

3 Q. That is not really what you saw?

4 A. I never met --

5 MR. QUIGLEY: Objection.

6 THE COURT: Overruled. You can answer.

7 A. -- I never met any of them.

8 BY MR. HASSAN:

9 Q. You never met any of the people you were told about with
10 big connections?

11 A. That's right.

12 Q. You met Gary Hirst?

13 A. I don't know if he was considered kind of an investor. I
14 don't know.

15 Q. Needless to say, the people you met were Gary Hirst and
16 Michelle Morton?

17 A. And Richie Deary.

18 Q. Not the people you were told had connections or high
19 society people?

20 A. That's right.

21 Q. You didn't meet Bevan Cooney?

22 A. No.

23 Q. You never communicated with Bevan Cooney?

24 A. No.

25 Q. And you never talked to him in any other way?

I6CJGAL3

Turney - cross

1 A. No.

2 MR. HASSAN: No further questions.

3 THE COURT: Why don't we take our morning break then.
4 Remember to keep an open mind and don't discuss the case.
5 We'll come back in about 10 minutes. Thank you.

6 (Jury excused)

7 THE COURT: Briefly I just want to address two issues
8 before Francisco Martin's testimony.

9 So, first, I just want to briefly state my reasoning
10 on the record with respect to the gold bars issue. Last week I
11 informed you I would not permit defendants to question
12 Mr. Martin about Jason Galanis' instructions for him to
13 purchase gold bars.

14 I agree with the government that to the extent that
15 any of the defendants wish to cross-examine Mr. Martin on this
16 topic, they will open the door to the entire universe of
17 evidence relating to the Code Rebel pump and dump. As the
18 government knows, Mr. Martin's expected testimony is ambiguous.
19 Jason Galanis instructed him to purchase gold bars, which are
20 harder to trace, so Galanis could, so that Galanis could
21 compensate stock promoters in his efforts to execute the Code
22 Rebel pump and dump. There is no good-faith basis for asking
23 Mr. Martin about the gold bars in any context other than the
24 Code Rebel pump and dump. So again defense counsel are warned
25 they may open the door to the pump and dump if they question

I6CJGAL3

Turney - cross

1 Mr. Martin about the gold bars.

2 I also just want to address the limiting instruction
3 that will be given regarding Mr. Cooney's lack of involvement
4 in Gerova after Mr. Martin testifies about the phone call in
5 which Mr. Cooney informed him of Jason Galanis' arrest. So I
6 will read you the instruction I intend to give.

7 Ladies and gentlemen, you have just heard evidence in
8 September 2015 Jason Galanis was arrested. You need to know
9 that Jason Galanis' arrest in September 2015 was for unrelated
10 conduct and had nothing to do with this case. I further
11 instruct you that Mr. Cooney was not the subject of that
12 investigation and there is no evidence that he knew about Jason
13 Galanis' conduct in that case until after Jason Galanis was
14 arrested on or about September 25, 2015.

15 Everyone okay with that?

16 MR. QUIGLEY: That is fine with the government, your
17 Honor.

18 MR. SCHWARTZ: The only thing I would say is elicited
19 through the witness, I would not want your Honor to be
20 instructing the jury what the date of the arrest was.

21 THE COURT: All right. That is fine. I mean the only
22 issue is that they know that he was separately arrested and
23 convicted in connection with this case, so I am just trying to
24 distinguish it.

25 MS. MERMELSTEIN: If it helps, the witness will say

I6CJGAL3

Turney - cross

1 the month, so not the exact date, so your Honor can read that
2 statement with respect to the month but not the date.

3 THE COURT: Is that okay, September 2015?

4 MR. SCHWARTZ: I am happy to have you mirror whatever
5 the testimony is, you just heard the testimony is --

6 THE COURT: If the witness testifies it was September
7 2015, I will leave that in. I will take out the date if he
8 doesn't testify about it, I will say that arrest.

9 MR. SCHWARTZ: If they want to prepare Mr. Martin so
10 he can say September 25, I have no problem with the date. I
11 don't want your Honor testifying.

12 THE COURT: I agree with you. I will be sensitive to
13 what does come in as for Jason Galanis' arrest as pertains
14 Mr. Archer. I got your letter, Mr. Schwartz. Thank you.

15 Upon further reflection, especially because the fact
16 of Jason Galanis' arrest is coming in through Mr. Martin, I
17 don't think the government needs to remove all references to
18 Jason Galanis' arrest in the other exhibits that we discussed,
19 so I think it is appropriate to permit the government to
20 provide this context for those exhibits.

21 I will give the same instruction with respect to
22 Mr. Archer. As I stated previously, I think the SEC press
23 release is just too prejudicial. If you're still trying to get
24 in a portion of 2103, let me know. I don't know exactly how
25 you do that well.

I6CJGAL3

Turney - cross

1 MR. QUIGLEY: I would still like to get in the top
2 email which is from Mr. Archer. We think that has
3 independent -- everything about the press release --

4 MR. SCHWARTZ: We'll talk about it.

5 THE COURT: Why don't you talk about that.

6 I wanted to tell you where I was on that. I will let
7 in those exhibits. The only one issue I had aside from the
8 press release was that there is reference to, I think it is in
9 781 or 782, but to the rest of the federal indictment of
10 Mr. Galanis and others, I don't know the "and others" should be
11 included.

12 MR. QUIGLEY: We'll take that out.

13 THE COURT: Talk about that. If you need to talk --

14 (Multiple voices)

15 MR. TOUGER: When you decided to do one for Mr. Cooney
16 and Archer, they were going to come in on separate days; and,
17 therefore, the prejudice to Mr. John Galanis would be reduced.
18 If you will give that same charge again today?

19 THE COURT: I am not.

20 MR. TOUGER: You are not?

21 THE COURT: I am not. It is just a related issue.
22 That is exactly why I am doing it separately, Cooney, Archer in
23 connection with specific evidence.

24 MR. QUIGLEY: I have one other issue, a scheduling
25 issue related to the testimony of Burnham Investors Trust

I6CJGAL3

Turney - cross

1 witness. She is available to be here tomorrow afternoon. I
2 don't know that she is flying from out of town. I think Mr.
3 Martin's going to be on cross at least until tomorrow morning.
4 We have one other witness between them and more email reading.
5 Given the early end tomorrow, I don't know if defense counsel
6 are in a position -- I prefer not to have have her fly here if
7 she won't get on, obviously, and if --

8 THE COURT: Just remember tomorrow is a half day. We
9 are ending at 3:00.

10 MR. QUIGLEY: That is our point. We would like to
11 tell her she doesn't have to come tomorrow.

12 THE COURT: Let's see how it goes. Let's see how far
13 we get by the end of the day and talk about it again.

14 MR. SCHWARTZ: I have one question. We can take it up
15 at the lunch break. I want to be clear on the scope of the
16 government's request and your Honor's ruling about the cross of
17 Mr. Martin about fake documents.

18 They said he will not be crossed on fake documents
19 relating to Code Rebel, which is fine. I want to be clear
20 whether I am allowed to simply ask him the question. He met
21 with Jason Galanis and then coordinated to submit false
22 documents in response to SEC subpoenas. I simply want to be
23 able to ask him that one question, did you submit false
24 documents to the SEC after talking to Jason Galanis. I think
25 that his false documents were not just Code Rebel. I want to

I6CJGAL3

Turney - cross

1 be clear that is what I will do.

2 MS. MERMELSTEIN: Just so it is clear, there is no
3 dispute Mr. Martin submitted fake documents to the SEC. He is
4 going to admit that because some of them don't relate to Code
5 Rebel. I don't think -- this can be done, you will see when it
6 comes in on direct, he received these 500,000 shares of Code
7 Rebel stock in his name, but really owned by Jason Galanis for
8 no consideration.

9 When stuff started to fall apart, there was an effort
10 to come up with a reason why he would have gotten them, and
11 there are convertible note and promissory note loan documents
12 with Thorsdale that are very similar to the ones that exist
13 with respect to Mr. Cooney. Those only relate to Code Rebel.
14 They are fake. He has admitted they're fake, but they only
15 relate to Code Rebel.

16 Separately he is the person who created Calvert, which
17 I think your Honor knows is one of the entities also then used
18 to try to create these cover stories, and he will say I created
19 Calvert and then he is going to identify documents that he
20 submitted himself to the SEC that are Calvert documents as
21 being obviously fake because they're dated in 2014. I think
22 Mr. Schwartz has enough to work on you're the kind of person
23 who created false documents.

24 MR. SCHWARTZ: That was my question.

25 Maybe Ms. Mermelstein is making a proffer that answers

I6CJGAL3

Turney - cross

1 it for me. It is not clear from his 3500. He creates Calvert,
2 creates certain documents related to Calvert. It is not clear
3 from his 3500 that he understood what he was doing with Calvert
4 was creating entirely fake documents.

5 Obviously, he understood some of them were dated as of
6 earlier times, but that can be illegitimate backdating or can
7 be legitimate papering a deal that happened before. If he will
8 testify he knew it was all fake, that is fine.

9 MS. MERMELSTEIN: I think what he is going to say I
10 created Calvert on this date at Jason Galanis' direction. I'm
11 the person who came up with the name Calvert. In fact, I named
12 it after the street that was the intersection where I lived, so
13 no one else knew it existed before I created it; and, thus, any
14 document dated before October 1, 2015 that references Calvert
15 is fake.

16 He is going to say yes, these are documents I
17 submitted to the SEC that are Calvert documents, so they are
18 fake. I think what he would say if pressed on this, I was
19 submitting all kinds of fake documents, I was in the midst of
20 this fraud, but I wasn't paying that close attention to this
21 particular Calvert document. I searched my files, these --

22 THE COURT: In any event, it sounds like it is fair
23 game for Mr. Schwartz to ask the general question you have
24 submitted false documents or something to that effect. He will
25 say yes, and then you don't need to get into --

I6CJGAL3

Turney - cross

1 MR. SCHWARTZ: I mean --

2 THE COURT: -- necessary unless you want.

3 MR. SCHWARTZ: Let's see how it goes in on direct. I
4 won't touch anything Code Rebel at all. With this
5 clarification, it seems like I will know what I can and can't
6 do.

7 THE COURT: Let's try to take a five-minute break
8 then.

9 (Recess)

10 (Jury present)

11 CROSS EXAMINATION

12 BY MR. WENNER:

13 Q. Good day, Mr. Turney.

14 A. Hi.

15 Q. My name is Craig Wenner. I represent Devon Archer. Would
16 you please confirm for me you never met, talked to or
17 corresponded with Devon Archer?

18 A. That is confirmed.

19 MR. WENNER: Thank you. No further questions.

20 CROSS EXAMINATION

21 BY MR. TOUGER:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. The same question. John Galanis, you have never met,
25 talked to, emailed, telephone-called with John Galanis?

I6CJGAL3

Walch - direct

1 A. I have not.

2 Q. Ever heard his name mentioned?

3 A. Over time, yes.

4 Q. When you were working at Hughes?

5 A. Not that I recall.

6 Q. From the time period you were working there, you never
7 heard the name John Galanis?

8 A. Not that I recall.

9 MR. QUIGLEY: No redirect.

10 THE COURT: You may step down.

11 (Witness excused).

12 MS. TEKEEI: Your Honor, the government calls Patricia
13 Walch.

14 PATRICIA WALCH,

15 called as a witness by the Government,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. TEKEEI:

19 Q. Good morning, Ms. Walch.

20 A. Good morning.

21 Q. Where do you work?

22 A. I work at FINRA, the financial industry regulatory
23 authority.

24 Q. What is FINRA?

25 A. FINRA is a self-regulatory organization that is dedicated

I6CJGAL3

Walch - direct

1 to investor protection and market integrity that oversees
2 broker-dealers.

3 Q. If you could just pull the microphone a little bit closer
4 to you. It is hard to hear in this courtroom.

5 What sorts of companies does FINRA regulate?

6 A. Broker-dealers.

7 Q. What is a broker-dealer?

8 A. A broker-dealer is either a natural person, a company that
9 has been approved by the SEC to conduct securities business.

10 Q. In the course of your work at FINRA, did you become
11 familiar with a broker-dealer called Burnham Securities, Inc.?

12 A. Yes, I was.

13 Q. Did you also become familiar with a broker-dealer called
14 Bonwick Capital?

15 A. Yes.

16 Q. Just focusing on the year 2015, did there come a time when
17 you learned about a series of Wakpamni Lake Community
18 Corporation bonds held by Burnham Securities?

19 A. Yes, I did.

20 Q. Also by Bonwick Capital?

21 A. Yes, I did.

22 Q. We'll get back to that in a moment.

23 First I want to ask you a few questions about your
24 work at FINRA. What is your current position at FINRA?

25 A. I am a surveillance director.

I6CJGAL3

Walch - direct

1 Q. What do you do as surveillance director?

2 A. I oversee the work of regulatory coordinators.

3 Q. Just, generally speaking, how does FINRA regulate
4 broker-dealers?

5 A. They basically review the filings that they make which
6 includes the financials and your sales practice.

7 Q. Can it also discipline members who are not following
8 certain rules?

9 A. Yes.

10 Q. Who oversees FINRA's work?

11 A. The SEC.

12 Q. You mentioned regulatory coordinators earlier. What are
13 the regulatory coordinators tasked with doing?

14 A. The regulatory coordinators are tasked with ensuring the
15 member firms actually comply with the capital rule and sales
16 practice activities.

17 Q. We'll talk about the capital rule in a moment, but what is
18 the purpose of the surveillance work conducted by the
19 regulatory coordinators?

20 A. To make sure that they're conducting the business that
21 they're approved to do and doing it correctly, and so they
22 review the filings that they make either in a quarterly or
23 monthly basis, which includes focus reports and supplemental
24 statements that the firms provide.

25 Q. Who, if anyone, is the regulatory oversight designed to

I6CJGAL3

Walch - direct

1 protect?

2 A. It is designed to protect the investors.

3 Q. How long have you been a director in the surveillance
4 group?

5 A. Seven years.

6 Q. Prior to that, what did you do?

7 A. Prior to that, I worked in a regulatory reporting group at
8 Barclays Capital, and before that I worked at Deutsche Bank
9 Securities.

10 Q. What are your day-to-day responsibilities as a director of
11 of a surveillance group at FINRA?

12 A. To basically oversee and review the work that the
13 coordinators submit to me for review. I would also communicate
14 with the coordinators and member firms as needed.

15 Q. So again focusing on the year 2015, did there come a time
16 when you learned about a series of Wakpamni Lake Community
17 Corporation bonds held by Burnham Securities?

18 A. Yes.

19 Q. How did you learn about them?

20 A. It was brought to my attention by the regulatory
21 coordinator.

22 Q. What was the context in which you learned about them?

23 A. The firm had filed the focus report and listed the Wakpamni
24 bonds as assets, and the coordinator didn't think that was
25 appropriate so it was brought to my attention.

I6CJGAL3

Walch - direct

1 Q. Approximately when was that first brought to your
2 attention?

3 A. The focus report is filed 17 business days after month end,
4 so that would have been sometime for the May filing, it would
5 have been sometime in late June or early July depending on when
6 the coordinator was doing the actual review.

7 Q. You have mentioned two terms, and and I think we'll go into
8 them a little bit later.

9 Before one of the terms you mentioned was net capital.
10 Can you describe for the jury what is net capital?

11 A. The net capital is basically a measurement of a firm's
12 liquid net worth, and liquid net worth includes cash or assets
13 that are readily convertible into cash.

14 Q. Such as securities?

15 A. Yes.

16 Q. Now, you also mentioned focus reports. Before we go
17 further, if you could just give the jury a description of what
18 is a focus report?

19 A. A focus report is basically a filing that is done either
20 quarterly or monthly that gives the assets and liabilities and
21 also the firm's P&L, profit and loss, and so operational
22 information.

23 Q. Do broker-dealers such as Burnham Securities have a set
24 amount of net capital they're required to maintain?

25 A. Yes, they are.

I6CJGAL3

Walch - direct

1 Q. What is the purpose of the net capital requirement?

2 A. To make sure that the broker-dealers don't go below a
3 certain threshold.

4 Q. What was Burnham Securities net capital requirement or
5 threshold?

6 A. \$100,000.

7 Q. Just in day-to-day terms, can you describe what that means.

8 A. The threshold?

9 Q. Yes, \$100,000 net capital requirement, what did that mean
10 in day-to-day terms for Burnham Securities?

11 A. We have what we call a statutory minimum capital
12 requirement, and what that means, it is based upon the firm's
13 activities, how they handle customer funds and securities, just
14 to make sure that based on that and the amount of risk that the
15 firm is willing to take, that is how the net capital, the
16 statutory minimum, the capital requirement is determined.

17 Q. What was Burnham Securities required to do if its net
18 capital was below the \$100,000 mark?

19 A. They need to file a notification with FINRA.

20 Q. Was Burnham also required to notify FINRA if it was getting
21 close to the \$100,000 net capital requirement?

22 A. Yes, they were.

23 Q. What was the threshold that triggered its requirement to
24 notify FINRA if it was getting close to the net capital
25 requirement?

I6CJGAL3

Walch - direct

1 A. It's called an early warning, and it is 120 percent.

2 Q. What is the process by which Burnham was required to make
3 such a notification to FINRA?

4 A. They would have to file the notification through the FINRA
5 gateway.

6 Q. So going back to the spring of 2015, let me direct your
7 attention to Government Exhibit 1076.

8 MS. TEKEEI: Ms. Shinewald, if you could pull that up
9 for the witness, the Court and the parties. Ms. Walch, there
10 is a binder in front of you with that exhibit as well.

11 BY MS. TEKEEI:

12 Q. Ms. Walch, do you recognize this exhibit, Government
13 Exhibit 1076?

14 A. Yes, I do.

15 Q. How do you recognize it?

16 A. Because I actually pulled this.

17 Q. Therefore, is it a true and accurate copy of records from
18 FINRA's filing systems?

19 A. Yes.

20 Q. Was this a document that was created, kept and maintained
21 in the ordinary course of FINRA's work as an organization?

22 A. Yes, it is.

23 Q. Was it made part of FINRA's records at or near the time
24 that it was filed?

25 A. Yes.

I6CJGAL3

Walch - direct

1 Q. Was it adopted by FINRA during that time?

2 A. Yes.

3 Q. Does FINRA rely on this report in the course of carrying
4 out its regulatory activities?

5 A. Yes, it does.

6 MS. TEKEEI: We offer Government Exhibit 1076.

7 THE COURT: Any objection?

8 MR. SCHWARTZ: No objection.

9 MS. NOTARI: No.

10 MR. TOUGER: No.

11 THE COURT: It will be admitted.

12 (Government's Exhibit 1076 received in evidence)

13 BY MS. TEKEEI:

14 Q. Ms. Walch, directing your attention to the very first page
15 of Government Exhibit 1076 -- Ms. Shinewald, please publish
16 that to the jury -- and focusing on the top half, what sort of
17 filing is this?

18 A. This is a financial notification, indicating net capital
19 less than 120 percent of required minimum net capital.

20 Q. Looking at the bottom of this document, who is the member
21 filing this notification?

22 A. Burnham Securities, Inc.

23 Q. If you could turn to the second page of this document,
24 looking at -- let me ask you one more question on that.

25 When you said the firm was filing a notification it

I6CJGAL3

Walch - direct

1 was nearing less than the 120 percent mark, what did you mean
2 by that?

3 A. They were in early warning, meaning they're having some
4 financial -- an indication that the firm may be having some
5 financial difficulties.

6 Q. Thank you. Now looking at this second page, can you read
7 the first question at the top.

8 A. On what date date or -- date was the firm's net capital
9 below 120 percent of its required capital.

10 (Continued on next page)

I6C7GAL4

Walch - Direct

1 BY MS. TEKEEI:

2 Q. And what is the date range or span that's reported here?

3 A. 3/31/2015 to 3/31/2015.

4 Q. And looking just above that line, what date did the firm
5 report that it discovered that its net capital was below the
6 120 percent mark?

7 A. 4/20/2015.

8 Q. And what's the amount of net capital that was reported for
9 that date?

10 A. \$118,498.

11 Q. Now, what are the repercussions when a firm has net capital
12 that is below the \$100,000 minimum mark, for example, here
13 Burnham Securities?

14 A. Well, first the firm would have to file a notification, and
15 secondly they would need to indicate to us what they're doing
16 to cure this. Are they infusing cash? You know, what are they
17 planning to do to get back to where they should be?

18 Q. And if a firm goes below -- or, excuse me -- if Burnham
19 Securities goes below the \$100,000 mark, what did it mean for
20 its ability to conduct in the securities business?

21 A. It means they would be net capital deficient, and they are
22 supposed to cease conducting their securities business if they
23 are deficient.

24 Q. So going back to this document, what steps does Burnham
25 report were taken to increase its net capital here? If you

I6C7GAL4

Walch - Direct

1 look at the bottom of the page, looking at that second box, if
2 you could read the sentence beginning with "Revenue"?

3 A. Revenue was increased as three investment banking fees
4 received totaling \$170,000, capital contributions made during
5 the month of April 2015: 4/20/2015, \$75,000; 4/27/2015,
6 \$200,000; and on 4/30/2015, \$150,000.

7 Q. Thank you.

8 Ms. Sheinwald, you can take that down.

9 Ms. Walch, in addition to financial notifications like
10 the one we just saw, what other financial reporting
11 requirements did Burnham have?

12 A. To file what you call the SSOI, which is supplemental
13 statement of income; and they had inventory, so they would file
14 a supplemental inventory statement.

15 Q. And earlier you mentioned focus reports as well.

16 A. And focus reports.

17 Q. And what were Burnham's focus report filing requirements?

18 A. They would file the focus report on a monthly basis.

19 Q. And do the focus reports also contain a calculation of the
20 broker dealer's -- in this case Burnham's -- net capital?

21 A. Yes, it did.

22 Q. I'd like to turn your attention now to Government Exhibits
23 1085 and 1080, which are also in your binder.

24 A. Did you say 1080?

25 Q. Yes, ma'am, 1080 and 1085.

I6C7GAL4

Walch - Direct

1 A. OK.

2 Q. Do you recognize those documents?

3 A. Yes, I do.

4 Q. How do you recognize them?

5 A. I printed them from our internal systems.

6 Q. And are those true and accurate copies of records from
7 FINRA's filing systems?

8 A. Yes, they are.

9 Q. Are those records created or kept and maintained in the
10 ordinary course of FINRA's organizational work?

11 A. Yes, they are.

12 Q. And were they made part of FINRA's records at or near the
13 time they were filed?

14 A. Yes.

15 Q. Does FINRA rely on them in the course of carrying out its
16 regulatory activities?

17 A. Yes, it does.

18 MS. TEKEEI: The government offers Government Exhibits
19 1080 and 1085.

20 THE COURT: Any objection?

21 MR. SCHWARTZ: No objection.

22 THE COURT: They will be admitted. Thank you.

23 (Government Exhibits 1080 and 1085 received in
24 evidence)

25 Q. Thank you. Ms. Walch, if we could begin with Government

I6C7GAL4

Walch - Direct

1 Exhibit 1085.

2 And, Ms. Sheinwald, if you could please publish that
3 for everyone.

4 Ms. Walch, can you briefly describe for us what is the
5 record that we're seeing here?

6 A. This is the -- this page is the cover page of the focus
7 report.

8 Q. Filed by which firm?

9 A. Filed by Burnham Securities for the period 4/1/2015 through
10 4/30/2015.

11 Q. And directing your attention to the page ending in 14288 at
12 the bottom right-hand corner, I believe it's the second page of
13 the document --

14 A. Yes.

15 Q. -- can you just describe generally what type of information
16 does this page report?

17 A. So basically what this page is reflecting is assets -- both
18 allowable and non-allowable -- and the totals. And the
19 allowable assets are assets that are readily convertible into
20 cash, while the non-allowable, they are not.

21 Q. And are allowable assets, can those be counted toward a
22 firm's net capital?

23 A. Yes.

24 Q. And what about non-allowable assets, can they be counted
25 toward a firm's net capital?

I6C7GAL4

Walch - Direct

1 A. They're non-allowable.

2 Q. And if you look at the left column, what are the first four
3 categories of assets that are listed here?

4 A. It's cash, receivables from broker dealers, receivables
5 from non-customers, and securities and spot commodities owned
6 at market value.

7 Q. And then focusing on the category for securities, 4B, and
8 looking at the allowable assets column for 4B, what is listed
9 there?

10 A. Debt securities.

11 Q. What is a debt security?

12 A. Where you're basically borrowing -- you're lending money to
13 someone; that's basically all that is.

14 Q. Is that like a bond?

15 A. Like a bond, yes.

16 Q. And what is the amount of debt securities listed by Burnham
17 as of April 30, 2015?

18 A. That's a zero balance.

19 Q. Let's turn now to the page ending in 90 at the bottom. And
20 just generally speaking, what does this page reflect?

21 A. Could you repeat that?

22 Q. Sure. The page ending in 90, it says at the top
23 "Computation of net capital."

24 A. OK. So this page is basically giving the firm's
25 computation of its net capital, which includes what is

I6C7GAL4

Walch - Direct

1 allowable and non-allowable assets, the totals.

2 Q. And if you could look at line 10, at the bottom of this
3 page, what is the amount of net capital reported by Burnham as
4 of April 30, 2015 in this report?

5 A. \$230,006.

6 Q. Thank you.

7 Ms.Sheinwald, you can take that down.

8 Let's take a look next at May of 2015.

9 Ms.Sheinwald, if you could publish for the jury
10 Government Exhibit 1080, also for the witness, the parties and
11 the court.

12 And, Ms. Walch, can you describe for the jury
13 generally speaking what is Government Exhibit 1080?

14 A. 1080 is a focus report filed by Burnham Securities for the
15 period May 1, 2015 through May 31, 2015.

16 Q. Thank you. And turning to the next page, the page that
17 ends in 14832, is this the allowable and non-allowable assets
18 section of the report for the time period ending in May 31,
19 2015?

20 A. Yes, it is.

21 Q. If you could look now at the category 4B, debt securities,
22 what is the amount of debt securities reported for Burnham as
23 of May 31, 2015?

24 A. \$3,023,123.

25 Q. Did there come a time when you learned what the debt

I6C7GAL4

Walch - Direct

1 securities were that Burnham reported on this May 2015 focus
2 report?

3 A. Yes, I did.

4 Q. What were those?

5 A. These were the Wakpamni bonds.

6 Q. And is that as a result of your review of Burnham's
7 regulatory filings and financials during that time period?

8 A. Yes, this was as a result of being brought to my attention
9 and getting the details behind it, yes.

10 Q. Let's now take a look at the net capital computation for
11 Burnham as of May 31, 2015. If you could turn to the page
12 ending in 14834, which is the fourth page of the document.

13 And, Ms. Sheinwald, if you could please put up page 4
14 of Government Exhibit 1085 in evidence on the left next to page
15 4 of Government Exhibit 1080. I think it's on the right.

16 Ms. Walch, just looking at the right, what is the
17 amount of net capital that was reported for Burnham Securities
18 for the time period ending April 30, 2015?

19 A. Can you repeat?

20 Q. It's line 10 on the right-hand column.

21 A. \$230,006.

22 Q. And that was the period ending April 30?

23 A. Yes.

24 Q. And now looking at the left side, what is the amount of net
25 capital reported by Burnham for the time period ending May 31,

I6C7GAL4

Walch - Direct

1 2015?

2 A. \$3,733,771.

3 Q. And what primarily accounted for the difference in these
4 amounts?

5 A. The Wakpamni bonds.

6 Q. Do you know the approximate amount of Wakpamni bonds that
7 Burnham acquired in May of 2015?

8 A. The value or the quantity?

9 Q. The amount that they acquired.

10 A. It was \$3,023,000.

11 Q. Now, through your oversight of Burnham, did you learn that
12 another broker dealer also held Wakpamni Lake Community
13 Corporation bonds?

14 A. Yes, I did.

15 Q. And what broker dealer was that?

16 A. Bonwick Capital.

17 Q. If you could take a look at Government's Exhibits 1070,
18 1071, 1072 and 1073. Do you recognize those documents?

19 A. Yes, I do.

20 Q. How do you recognize them?

21 A. These were documents that I pulled from our internal
22 systems.

23 Q. And so are they true and accurate copies of records from
24 FINRA's filing systems?

25 A. Yes.

I6C7GAL4

Walch - Direct

1 MR. SCHWARTZ: No objection.

2 Q. Were these documents kept and maintained in the ordinary
3 course of FINRA's organizational activities?

4 A. Yes.

5 Q. Were they made part of FINRA's records at or near the time
6 they were filed?

7 A. Yes.

8 Q. And does FINRA rely on them in the course of carrying out
9 its regulatory activities?

10 A. Yes.

11 MS. TEKEEI: Your Honor, the government offers
12 Government Exhibits 1070, 1071, 1072, and 1073.

13 THE COURT: Any objection?

14 MR. SCHWARTZ: No objection.

15 MR. TOUGER: No objection.

16 MS. NOTARI: No objection.

17 THE COURT: They will be admitted.

18 (Government Exhibits 1070, 1071, 1072 and 1073
19 received in evidence)

20 Q. Thank you. Ms. Sheinwald, can you please publish Government
21 Exhibit 1070 for everyone.

22 Ms. Walch, can you describe for the jury what is
23 Government Exhibit 1070?

24 A. It's a financial notification indicating the net capital
25 below minimum amount required filed by Bonwick Capital.

I6C7GAL4

Walch - Direct

1 Q. And if you could turn to the next page, what is the
2 reported date range of Bonwick's net capital deficiencies?

3 A. February 25, 2015. It was filed February 25, 2015 for
4 deficiency period January 10, 2015 through February 24, 2015.

5 Q. And, Ms. Walch, are you familiar with Bonwick's net capital
6 requirement?

7 A. Yes, I am.

8 Q. What was that requirement?

9 A. \$100,000.

10 Q. So looking here at the second page, what was Bonwick's
11 reported net capital for the time period that's reported here,
12 January 10, 2015 through February 24, 2015?

13 A. \$75,838.

14 Q. Now, if you could please take a look next at Government
15 Exhibit 1071.

16 Ms. Sheinwald, can you please publish that for the
17 jury.

18 What is Government Exhibit 1071?

19 A. It's a financial notification filed by Bonwick Capital
20 Partners that indicates that the firm has net capital less than
21 120 percent of required minimum net capital.

22 Q. And turning to the next page, what is the reported date
23 range of Bonwick's net capital deficiencies here?

24 A. March 11, 2015 through April 6, 2015.

25 Q. And what was Bonwick's reported net capital for that time

I6C7GAL4

Walch - Direct

1 period?

2 A. \$102,980.

3 Q. And does Bonwick provide an explanation here for what steps
4 were taken to increase its net capital?

5 A. Yes.

6 Q. And if you could just look at the bottom. Can you please
7 read the first sentence in the second box here beginning with
8 "The firm..."

9 A. "The firm is in the process of permanently recapitalizing
10 the company."

11 Q. Go ahead and read the next sentence as well.

12 A. "It has an executed term sheet from a prospective investor
13 for \$6 million in new capital, and has already received a small
14 portion (\$70,000) of that investment, along with \$45,600 from
15 existing investors."

16 Q. Let's turn now to Government Exhibit 1072, Ms. Sheinwald.
17 Can you please publish that.

18 Ms. Walch, what is Government Exhibit 1072?

19 A. Financial notification filed by Bonwick Capital Partners,
20 indicating net capital below minimum amount required.

21 Q. And if you could turn to the next page, what is the
22 reported date range of Bonwick's net capital deficiency?

23 A. February 25, 2015 through April 29, 2015.

24 Q. And what was Bonwick's reported net capital for that time
25 period?

I6C7GAL4

Walch - Direct

1 A. \$49,437.

2 Q. Does Bonwick provide an explanation here for what steps
3 were taken to increase its net capital?

4 A. Yes, it did.

5 Q. And if you could look at the bottom box and read the
6 sentence that begins with "In addition ..."

7 A. "In addition, the firm has received a capital infusion of
8 approximately \$6 million in cash and securities on 5/29/15."

9 Q. Go ahead and read the following sentence as well.

10 A. "Such infusion has brought the firm's net capital to
11 approximately \$5.6 million, which is \$5.5 million in excess of
12 the firm's requirement of \$100,000."

13 Q. And if you could turn next to Government Exhibit 1073.
14 What is this document?

15 A. It's a financial notification filed by Bonwick Capital
16 Partners indicating net capital below amount required.

17 Q. And if you could turn to the second page, can you tell us
18 what is the reported date range of Bonwick's net capital
19 deficiencies?

20 A. April 30, 2015 through May 28, 2015.

21 Q. And what was Bonwick's reported net capital for that time
22 period?

23 A. Negative \$95,886.

24 Q. Does Bonwick provide here an explanation for what steps
25 were taken to increase its net capital?

I6C7GAL4

Walch - Direct

1 A. Yes, it did.

2 Q. Can you read the first sentence in the section where
3 Bonwick provides that explanation, the sentence beginning with
4 "The company..."

5 A. "The company received a capital infusion of \$5,993,697 on
6 May 29, 2015 in the form of cash and securities, which
7 increased the firm's net capital by \$5,532,173 (after
8 haircuts)."

9 Q. Thank you.

10 Ms. Sheinwald, you can take that down.

11 Ms. Walch, was Bonwick Capital like Burnham required
12 to file focus reports?

13 A. Yes, it was.

14 Q. Let's take a look at a couple of them. Directing your
15 attention to Government Exhibits 1084 and 1082. Do you
16 recognize those documents?

17 A. Yes, I do.

18 Q. And how do you recognize them?

19 A. I printed these from our internal systems.

20 Q. And are these also true and accurate copies of records from
21 FINRA's filing systems?

22 A. Yes, they are.

23 Q. Were they created, kept, and maintained in the ordinary
24 course of FINRA's work?

25 A. Yes, they were.

I6C7GAL4

Walch - Direct

1 Q. And were they made part of FINRA's records at or near the
2 time they were filed?

3 A. Yes.

4 Q. Does FINRA rely on those reports in the course of carrying
5 out its regulatory work?

6 A. Yes, it does.

7 MS. TEKEEI: Your Honor, the government offers
8 Government Exhibits 1084 and 1082.

9 THE COURT: Any objection?

10 MR. SCHWARTZ: No objection.

11 MR. TOUGER: No objection.

12 THE COURT: They will be admitted.

13 (Government Exhibits 1082 and 1084 received in
14 evidence)

15 MS. TEKEEI: Thank you, your Honor.

16 Ms. Sheinwald, can you please publish for everyone
17 Government Exhibit 1084.

18 Q. Ms. Walch, can you describe for the jury what is this
19 document?

20 A. This is the focus report that was filed by Bonwick Capital
21 Partners for the period 4/1/15 through 4/30/15.

22 Q. And if we could turn to the next page of this report, is
23 this the allowable and non-allowable assets portion of the
24 report for the same time period ending in April 30, 2015?

25 A. Yes, it is.

I6C7GAL4

Walch - Direct

1 Q. And if we could just focus on that line 4B in Bonwick's
2 April focus report, debt securities. What is the amount of
3 debt securities that Bonwick reports for the time period ending
4 April 30, 2015?

5 A. \$9,002.

6 Q. And if you could turn to the fourth page of this document
7 which ends in 14927 at the bottom. Is this the net capital
8 computation for Bonwick Capital as of April 30, 2015?

9 A. Yes, it is.

10 Q. And what amount of net capital does Bonwick report here?

11 A. \$229,892.

12 Q. Now, if you could turn next to Government Exhibit 1082.

13 Ms. Sheinwald, can you publish that to the jury and
14 everyone.

15 Ms. Walch, what is this document?

16 A. This is a focus report that was filed by Bonwick Capital
17 for the period 5/1/15 through 5/31/15.

18 Q. And again let's turn to the second page of this report. Is
19 this the allowable and non-allowable assets portion of the
20 report for the time period ending May 31, 2015?

21 A. Yes, it is.

22 Q. And again if we could focus on the line 4B and the
23 allowable assets column. What is the amount of debt securities
24 reported in Bonwick's May 2015 focus report?

25 A. \$5,821,897.

I6C7GAL4

Walch - Direct

1 Q. Do you know what accounted for at least some of the
2 difference in the debt securities listed here between the April
3 and May focus reports for Bonwick?

4 A. Yes, I do.

5 Q. What was that?

6 A. The Wakpamni bonds.

7 Q. Let's now take a look at the net capital computation for
8 Bonwick.

9 Ms. Sheinwald, if you could please put up page 4 of
10 Government Exhibit 1084 on the left next to page 4 of
11 Government Exhibit 1082.

12 Now, starting with the left document, the April 30,
13 2015 report, Ms. Walch, can you remind the jury what was
14 Bonwick's reported net capital for the time period ending April
15 30, 2015? That's line 10 on the lefthand document.

16 A. \$229,892.

17 Q. And then turning to the right, document on the right, the
18 report filed for the time period ending May 31, 2015, what is
19 the amount of net capital reported for Bonwick for that time
20 period?

21 A. 5,504,800.

22 Q. And what primarily accounted for the difference in these
23 amounts?

24 A. The debt securities.

25 Q. And in particular which debt securities?

I6C7GAL4

Walch - Direct

1 A. The Wakpamni bonds.

2 Q. OK. Thank you, Ms. Sheinwald. You can bring that down.

3 Ms. Walch, turning back to Burnham Securities, did
4 there come a time when you became involved in questions that
5 FINRA posed to Burnham regarding the Wakpamni bonds that
6 Burnham had reported as allowable debt securities in its focus
7 reports?

8 A. Yes, I did.

9 Q. Approximately when was that?

10 A. I think it might have been sometime in late June or July we
11 started having conversations with the firm.

12 Q. And without telling us what anyone said, what steps did
13 FINRA take with respect to Burnham and the Wakpamni bonds?

14 A. So, what we tried to do is go to the Bloomberg system. We
15 went to the Bloomberg system just to see the type of security
16 it is and the pricing of the security since we were questioning
17 its allowability.

18 Q. And did you participate in asking questions of Burnham
19 about the bonds?

20 A. Yes, I did.

21 Q. What were the questions that FINRA posed to Burnham
22 regarding the Wakpamni bonds during that time period?

23 A. How did they come up with the pricing of the securities,
24 because, you know, from our independent research we weren't
25 able to find a price for these bonds.

I6C7GAL4

Walch - Direct

1 Q. Did FINRA ask Burnham questions about whether the bonds
2 were marketable?

3 A. Yes, we did.

4 Q. And did FINRA ask questions about how Burnham was
5 classifying the bonds?

6 A. Yes, we did.

7 Q. What were the questions that FINRA asked about how Burnham
8 was classifying the bonds?

9 A. Well, our question is how did Burnham determine that the
10 bonds were actually allowable assets. Based on our research,
11 we could not find that there was a ready market for these
12 securities.

13 Q. And what was the purpose -- what was the ultimate goal of
14 these questions? What were you trying to determine?

15 A. Well, we were trying to determine if the bonds were
16 actually marketable and how to price it. And the other thing
17 was that from our research it didn't appear to be a municipal
18 bond.

19 Q. And why did it matter if it were a municipal bond?

20 A. Well, it depends on what type of bond it is, it would
21 indicate how it's classified.

22 Q. As allowable or non-allowable?

23 A. As an allowable or a non-allowable asset.

24 Q. And did Burnham provide prices for the bonds?

25 A. Yes, they provided a statement to us.

I6C7GAL4

Walch - Direct

1 Q. And did FINRA accept the prices that Burnham provided?

2 A. No, we did not.

3 Q. For approximately how long did FINRA's review of the
4 Wakpamni bonds held by Burnham go on?

5 A. It took a couple of months.

6 Q. And at the end of that process what if any instructions did
7 FINRA provide to Burnham?

8 A. Well, in conversation with the firm, we told them that we
9 communicated with -- we did our independent research, we
10 communicated with the SEC, and from our research the bonds were
11 not municipal bonds, and as such the firm would need to refile
12 a focus report and reclassify these bonds as non-allowable.

13 Q. And what did that mean for Burnham's net capital?

14 A. That means there they would be net capital deficient, and
15 they would have to file a financial notification.

16 Q. And did Burnham refile financial notifications as a result?

17 A. Yes, they did.

18 Q. And how about Bonwick, did Bonwick receive similar
19 instructions from FINRA?

20 A. Yes, they did.

21 Q. And did Bonwick have to file financial notification
22 reports?

23 A. Yes, they did.

24 Q. So let's turn to Government Exhibit 1074. Ms. Walch, if
25 you could take a look at it. What is this document?

I6C7GAL4

Walch - Direct

1 A. This is a financial notification filed by Bonwick Capital
2 Partners indicating net capital below minimum amount required.

3 MS. TEKEEI: Your Honor, we offer Government Exhibit
4 1074.

5 THE COURT: Any objection?

6 MS. NOTARI: No.

7 MR. SCHWARTZ: No.

8 MR. TOUGER: No objection.

9 THE COURT: 1074 will be admitted.

10 (Government Exhibit 1074 received in evidence)

11 Q. And what is the time period of this net capital deficiency
12 report by Bonwick?

13 A. September 2, 2015 through September 13, 2015.

14 Q. Sorry. I meant to tell you to go ahead and turn to the
15 second page, but you got there without me.

16 What was Bonwick's reported net capital for that time
17 period?

18 A. \$62,083.

19 Q. Does Bonwick provide an explanation here for what caused
20 the deficiency?

21 A. Yes, they did.

22 Q. And what is the explanation provided by Bonwick in the what
23 caused the deficiency section?

24 A. "One of the firm's marketable securities (11,499 shares
25 CDRB) decreased drastically from 8/31/2015 (\$14.30 per share)

I6C7GAL4

Walch - Direct

1 to 9/2/2015 (\$8.42 a share), resulting in an unrealized loss of
2 approximately \$67,000 in this two day period. This loss was
3 compounded by the fact that the company had deemed one of its
4 other positions, a \$5 million municipal bond illiquid and thus
5 non-allowable as of 8/31. The combination of these two issues
6 caused the violation. In addition, the company pierced early
7 warning one day early on 9/1/15."

8 Q. What was the bond that was classified as non-allowable?

9 A. The Wakpamni bonds.

10 Q. If you could turn next to Government Exhibit 1075; do you
11 recognize this document?

12 A. Yes, I do.

13 Q. And what is this document?

14 A. A financial notification filed by Bonwick Capital Partners
15 indicating that net capital below amount required.

16 MS. TEKEEI: Your Honor, we offer Government Exhibit
17 1075.

18 THE COURT: Objection?

19 MR. SCHWARTZ: No objection.

20 THE COURT: It will be admitted.

21 (Government Exhibit 1075 received in evidence)

22 Q. Ms. Walch, turning to the next page, what's the reported
23 date range of Bonwick's net capital deficiencies?

24 A. January 12, 2016 to January 14, 2016.

25 Q. And what was Bonwick's reported net capital for that time

I6C7GAL4

Walch - Direct

1 period?

2 A. A negative \$314,096.

3 Q. And does Bonwick provide here an explanation for what
4 caused the deficiency?

5 A. Yes, they did.

6 Q. Can you read the first sentence in the section about what
7 caused the deficiency.

8 A. "Bonwick possesses a \$4.8 million bond that it has included
9 as part of its net capital in the past."

10 Q. And can you read the second sentence as well.

11 A. "On Tuesday, January 12th, FINRA determined that the bond
12 should be treated as non-allowable due to there being no active
13 market."

14 Q. Thank you.

15 Ms.Sheinwald, you can take that down.

16 Let's turn next to Government Exhibit 1078.

17 Ms. Walch, do you recognize Government Exhibit 1078?

18 A. Yes, I do.

19 Q. And what -- how do you recognize it?

20 A. I printed this from our internal systems.

21 MS. TEKEEI: Your Honor, we offer Government Exhibit
22 1078.

23 THE COURT: Any objection?

24 MS. NOTARI: No objection.

25 MR. SCHWARTZ: No objection.

I6C7GAL4

Walch - Direct

1 MR. TOUGER: No objection.

2 THE COURT: Admitted.

3 (Government Exhibit 1078 received in evidence)

4 Q. Ms.Sheinwald, can you publish that for everyone.

5 And what is this document, Ms. Walch?

6 A. It's a financial notification filed by Burnham Securities
7 indicating net capital below minimum amount required.

8 Q. And if you could turn to the next page, what is the time
9 period for the reported date range of Burnham's net capital
10 deficiencies?

11 A. 7/31/2015 through 1/15/2016.

12 Q. And what was Burnham's reported net capital for July 31,
13 2015 through January 15, 2016?

14 A. Negative \$660,250.

15 Q. Does Burnham provide an explanation here for what caused
16 the deficiency?

17 A. Yes, they did.

18 Q. And what is that explanation?

19 A. "The deficiency was caused by a reclassification of a bond
20 position from an allowable asset to a non-allowable asset. The
21 firm was made aware of the unallowable asset status of the bond
22 in a phone conversation with the SEC and FINRA on January 11,
23 2016."

24 Q. And what was the bond position that was reclassified from
25 an allowable asset to a non-allowable asset?

I6C7GAL4

Walch - Direct

1 A. The Wakpamni bonds.

2 Q. Thank you.

3 Ms.Sheinwald, you can take that down.

4 Ms. Walch, earlier you described how Burnham had
5 provided pricing for the bonds. Do you recall that testimony?

6 A. Yes.

7 Q. And what were the types of information Burnham provided
8 when it provided pricing information for the bonds?

9 A. Burnham provided us with a statement from Morgan Stanley
10 that indicated the price of the bond and the value.

11 Q. And did there come a time when Burnham provided information
12 about a sale of a portion of the bonds?

13 A. Yes, they did.

14 Q. And what was that?

15 A. They told us that there was another broker dealer that has
16 a pending sale of \$100,000 worth of the Wakpamni bonds.

17 Q. And what was that other broker dealer?

18 A. Bonwick Capital.

19 Q. And what was the amount of bonds that was reported to be
20 pending sale?

21 A. 100,000.

22 Q. Do you recall the entity to which those bonds were to be
23 sold?

24 A. I think it was Condor. I'm not a hundred percent sure.

25 Q. Did you say Condor?

I6C7GAL4

Walch - Cross

1 A. Yes.

2 Q. Ms. Walch, is Burnham Securities still registered as a
3 broker dealer with FINRA?

4 A. No, it's not.

5 Q. Is Bonwick Capital still registered as a broker dealer with
6 FINRA?

7 A. No, it's not.

8 MS. TEKEEI: Thank you. No further questions at this
9 time.

10 THE COURT: Any cross-examination?

11 CROSS EXAMINATION

12 BY MR. SCHWARTZ:

13 Q. Good afternoon, ladies and gentlemen.

14 And good afternoon, Ms. Walch.

15 A. Good afternoon.

16 Q. My name is Matthew Schwartz. I am one of the lawyers for
17 Devon Archer. You have never met Mr. Archer; is that right?

18 A. No, that's correct.

19 Q. And you have never communicated with Mr. Archer in any way,
20 true?

21 A. True.

22 Q. So when you've been testifying about what Burnham said or
23 Burnham did, whoever that refers to, it's not Mr. Archer, true?

24 A. Right.

25 Q. Now, in preparing to come here today you did meet with the

I6C7GAL4

Walch - Cross

1 prosecutors on a few occasions, correct?

2 A. Yes, I did.

3 Q. You spoke to them on phone, right?

4 A. Yes, I did.

5 Q. You exchanged some e-mails with them, true?

6 A. Yes.

7 Q. And am I right that the very first time the prosecutors
8 contacted you about this case was on May 8th of 2018?

9 A. I don't remember the date off the top of my head.

10 Q. Sometime last month, true?

11 A. As I said, I don't remember, you know, the exact date that
12 they contacted me, but they did contact me.

13 Q. It wasn't months and months or years and years ago.

14 A. No.

15 Q. It was within the last few weeks, true?

16 A. Yes.

17 Q. And over the last few weeks they have spoken to you half a
18 dozen times maybe, right?

19 A. Probably.

20 Q. And the first time that they ever asked you about Devon
21 Archer, by the way, was just this past Friday on the 8th of
22 June; isn't that right?

23 A. Yes.

24 Q. Now, your testimony was principally about something called
25 net capital, right?

I6C7GAL4

Walch - Cross

1 A. Correct.

2 Q. And net capital is governed by something called Rule 15C-3,
3 true?

4 A. 15C3-1, yes.

5 Q. And that rule -- that's not a short rule, right? That's a
6 long rule, true?

7 A. Correct.

8 Q. If you printed it out, it would take many, many pages,
9 right?

10 A. Um-hum.

11 Q. And one of the things that Rule 15C3-1 contains is a list
12 of haircuts, right?

13 A. Correct.

14 Q. And when we talk about a haircut, in the context of net
15 capital what we mean is that certain assets may be discounted
16 by a set percentage, right?

17 A. Right.

18 Q. For example, cash is not discounted at all, right?

19 A. Correct.

20 Q. And U.S. treasury bonds are also not discounted; is that
21 right?

22 A. No, bonds, they take haircuts based on the maturity.

23 Q. So a ten year U.S. T bill, what's the haircut on that?

24 A. I don't remember that off the top of my head.

25 Q. Pretty small though, right?

I6C7GAL4

Walch - Cross

1 A. It's small.

2 Q. And that's because U.S. treasury bonds could very quickly
3 be turned into cash, right?

4 A. Correct.

5 Q. And big cap securities like IBM or Apple, they have a
6 bigger haircut, right?

7 A. Yes.

8 Q. But still relatively modest, true?

9 A. Correct.

10 Q. And this is all because the purpose of net capital
11 requirements is about insuring that a broker dealer has
12 sufficient liquidity, true?

13 A. Correct.

14 Q. And that's in case something were to happen, it would need
15 to have cash or the ability quickly to get cash in order to
16 close out its positions, right?

17 A. Correct.

18 Q. And FINRA and the SEC make distinctions between different
19 kinds of broker dealers, right?

20 A. Yes.

21 Q. And in this case we're talking about something called an
22 introducing broker, right?

23 A. Correct.

24 Q. Both Burnham Securities, Inc. and Bonwick Capital, Inc.
25 were what is called introducing brokers, right?

I6C7GAL4

Walch - Cross

1 A. Yes.

2 Q. And introducing brokers as a rule have a \$100,000 net
3 capital requirement, true?

4 A. No.

5 Q. In general they have a \$100,000 net capital requirement,
6 true?

7 A. No, it depends on the activity.

8 Q. Maybe I'm phrasing this incorrectly. The net capital
9 calculation for an introducing broker is the smaller of
10 \$100,000 or a calculation based on its activity, true?

11 A. Right, but you could have broker dealers where the minimum
12 net capital is \$5,000.

13 Q. Right. And in general the net capital requirements for
14 introducing brokers are fairly low because they don't hold huge
15 positions on hand, right?

16 A. They're fairly low.

17 Q. The other kind of broker is called a clearing broker,
18 right?

19 A. Correct.

20 Q. And clearing brokers hold large securities positions,
21 right?

22 A. Right.

23 Q. So they typically require more net capital because they
24 have to close out in that worst case scenario much bigger
25 positions, right?

I6C7GAL4

Walch - Cross

1 A. Correct.

2 Q. In the case of Burnham Securities -- well, let me strike
3 that.

4 An introducing broker will route its trades through a
5 clearing broker, true?

6 A. Yes.

7 Q. And in the case of Burnham Securities, Incorporated, its
8 clearing broker was JP Morgan Chase, true?

9 A. Correct.

10 Q. You would agree with me, Ms. Walch, that broker dealers are
11 highly, highly regulated, true?

12 A. Can you repeat that? I'm sorry.

13 Q. You would agree with me that broker dealers are highly,
14 highly regulated, right?

15 A. Yes.

16 Q. And the net capital requirement is very carefully watched,
17 true?

18 A. Yes.

19 Q. For example --

20 Mr. Jackson, if you could pull back up Exhibit 1076 at
21 page 2 and just blow that up.

22 This was an occasion where on a single day, March 31,
23 2015, Burnham Securities pierced early warning by going beneath
24 the 120 percent net capital threshold, true?

25 A. Yes.

I6C7GAL4

Walch - Cross

1 Q. And it went below that threshold by \$1,502. True?

2 A. Yes.

3 Q. It was at 118.5 percent of net capital instead of 120?

4 A. Yes.

5 Q. But still even though it was just for one day for only
6 \$1,502 it had to file this form, right?

7 A. Yes.

8 Q. Because that's what FINRA requires.

9 A. Yes.

10 Q. And that's what Burnham Securities did.

11 A. Correct.

12 Q. Now, I do want to be clear about one thing. When we talk
13 about what is allowable or non-allowable for net capital
14 purposes, we're not saying anything about the investment
15 quality of the assets, true?

16 A. Yes, yes, you are saying something about the investment
17 quality.

18 Q. Well, let me put it differently. An asset may be
19 non-allowable but still be a very good investment, right?

20 A. Yeah, but it's non-allowable.

21 Q. That's exactly my point. It's non-allowable for net
22 capital purposes, right?

23 A. Yes.

24 Q. For that very specific regulatory purpose it's
25 non-allowable.

I6C7GAL4

Walch - Cross

1 A. Correct.

2 Q. But it may be a great investment for someone who wants to
3 make money, right?

4 A. It may be.

5 Q. Like real estate. Real estate is generally considered to
6 be illiquid, right?

7 A. Well, it all depends.

8 Q. Can I use real estate to satisfy a broker dealer's net
9 capital requirement?

10 A. No, generally, it wouldn't be allowable.

11 Q. Right. But real estate can be very, very valuable, right?

12 A. Yes.

13 Q. What about bit coin, can I use bit coin to satisfy net cap?

14 MS. TEKEEI: Objection.

15 THE COURT: I will allow it.

16 You can answer that.

17 A. Bit coin, but bit coin would not be allowable.

18 Q. Right. But we all know from reading the newspaper that bit
19 coin can be worth tens of thousands of dollars, right?

20 MS. TEKEEI: Objection.

21 THE COURT: Sustained.

22 Q. My point is -- and I think we agree with one another --
23 that what is allowable or non-allowable is a regulatory
24 definition, not a statement about whether something is a good
25 investment, right?

I6C7GAL4

Walch - Cross

1 A. It's a regulatory.

2 Q. Now, am I right that you did not have much experience in
3 broker dealers using sovereign bonds for net capital purposes
4 prior to this discussion with Burnham and separately with
5 Bonwick?

6 A. Yeah, most of the broker dealers that we have don't have
7 sovereign bonds.

8 Q. It's rare.

9 A. It's rare.

10 Q. And so when you saw -- when FINRA saw that Burnham
11 Securities, Inc. owned these WLCC bonds and they were using
12 them for net capital purposes, FINRA had to do some research,
13 true?

14 A. Correct.

15 Q. And I think you testified one of the things that you did
16 was you went onto Bloomberg to locate an independent price,
17 true?

18 A. Yes.

19 Q. And there was a price on Bloomberg, right?

20 A. No, we couldn't -- I couldn't find a price.

21 Q. You couldn't find a price on Bloomberg for the bonds?

22 A. Right.

23 Q. And one of the things that you did was look at a statement
24 from a financial institution, true?

25 A. A statement that was given to us by Burnham Securities.

I6C7GAL4

Walch - Cross

1 Q. Right. And that was a Morgan Stanley statement.

2 A. It was a Morgan Stanley statement, correct.

3 Q. And then FINRA actually had a conversation with Morgan
4 Stanley.

5 A. Yes, we did.

6 Q. And no one tried to prevent that, right?

7 A. Can you repeat that.

8 Q. I said no one tried to prevent that, right?

9 A. Having the conversation with Morgan Stanley?

10 Q. Right.

11 MS. TEKEEI: Objection.

12 THE COURT: Sustained.

13 Q. Well, no one at Burnham expressed any discomfort with FINRA
14 speaking directly to Morgan Stanley, true?

15 A. Morgan Stanley is a broker dealer that we regulate.

16 Q. Right.

17 A. We could speak to Morgan Stanley.

18 Q. Exactly. You didn't need to ask anyone's permission.

19 A. No, I did not.

20 Q. And Morgan Stanley is a big reputable broker dealer.

21 A. Yes, they are.

22 Q. And, by the way, the kinds of conversations about net
23 capital and what was allowable for net capital, you have those
24 conversations all the time, right?

25 A. Yes.

I6C7GAL4

Walch - Cross

1 Q. You have those conversations sometimes with Morgan Stanley,
2 right?

3 A. No, I don't have that conversation with Morgan Stanley,
4 because I don't -- I am not responsible for Morgan Stanley's
5 focus reports.

6 Q. Someone else at FINRA would have that conversation with
7 Morgan Stanley.

8 A. Yes.

9 Q. Now, in this case once FINRA understood that Burnham
10 Securities was using the WLCC bonds as part of its net capital
11 calculation, that began this process of discussion with Burnham
12 Securities, true?

13 A. Correct.

14 Q. And that began when the regulatory coordinator for Burnham
15 reached out to you, right?

16 A. Yes.

17 Q. And I think you testified that that was in maybe June of
18 2015?

19 A. June or July of 2015. I'm not sure of the correct date.

20 Q. Now, to be clear, in May or June of 2015 when FINRA
21 understood that Burnham was using these WLCC bond, it didn't
22 just tell Burnham to stop, right?

23 A. No.

24 Q. The conversation that you've described with Burnham about
25 its net capital calculation took several months, right?

I6C7GAL4

Walch - Cross

1 A. It took several months because we were doing our due
2 diligence based on what the firm -- the conversation that we
3 had with the firm.

4 Q. Absolutely. And as part of that conversation you spoke
5 with lawyers for Burnham Securities, true?

6 A. I don't recall if I spoke with the lawyers.

7 Q. Do you recall that lawyers for Burnham Securities submitted
8 written opinions to FINRA?

9 A. Yes.

10 Q. And in those written opinions the real question -- and the
11 question throughout -- was whether these WLCC bonds should be
12 treated as sovereign bonds or municipal bonds, right?

13 A. Right. Because the firm said it's municipal, and counsel
14 came back to say it's municipal bonds, so that's why the letter
15 was trying to indicate as to why Burnham thought it was a
16 municipal bond.

17 Q. Exactly. So Burnham was arguing that these were municipal
18 bonds, and FINRA was thinking that they might be sovereign
19 bonds.

20 A. Correct.

21 Q. And one of the things that Burnham did was they put forward
22 an opinion by their lawyer that these were categorized as
23 municipal bonds, right?

24 A. Correct.

25 Q. And the reason why that matters is because in that big

I6C7GAL4

Walch - Cross

1 chart, that haircut chart at the end of Rule 15C3-1, you apply
2 a different haircut to muni bonds, right?

3 A. Correct.

4 Q. So muni bonds could be used for a net cap, right?

5 A. Yes.

6 Q. And the opinion letter that FINRA received from Burnham
7 Securities' counsel, do you recall who that was from?

8 A. I don't remember the full name of the counsel. It's Hunter
9 something. I don't remember the full name.

10 Q. Can I show you --

11 Mr. Jackson, please, just to Judge Abrams and the
12 witness and the lawyers --

13 -- Exhibit 1402. Is that the opinion letter that
14 you're talking about?

15 A. Yes.

16 MR. SCHWARTZ: I offer Exhibit 1402.

17 MS. TEKEEI: Objection. Hearsay.

18 THE COURT: You know what, it's actually just about
19 lunchtime, so why don't we take a break now for lunch. We will
20 come back in an hour. Don't discuss the case and keep an open
21 mind. Thank you.

22 You can step down, and if you could come back in an
23 hour as well.

24 WITNESS: Thank you.

25 (Witness not present)

I6C7GAL4

Walch - Cross

1 (Jury not present)

2 THE COURT: I want to just -- I mean I understand it's
3 a hearsay objection. Do you want to respond, Mr. Schwartz?

4 MR. SCHWARTZ: I mean I'm not offering it for the
5 truth; I'm just offering it for the communication.

6 MS. TEKEEI: Your Honor, this is just not relevant.
7 He already went over this with the witness. She described that
8 there were communications with counsel. We even, you know,
9 could have objected but allowed a little bit of discussion
10 about the nature of those communications.

11 This is hearsay; it's being offered for the truth of
12 what is in there. You know, I think the witness has described
13 what is in her knowledge and what is in her memory, and I think
14 that's about all that needs to be done.

15 THE COURT: I think that's right. I'm going to keep
16 it out.

17 All right, I will see you all in an hour.

18 MS. MERMELSTEIN: Your Honor, on scheduling, would you
19 prefer for us to have Mr. Martin here in order to invoke prior
20 to lunch, and then he will wait for Ms. Walch to finish? Or do
21 you want us to just do that once she's off the stand?

22 THE COURT: No, I mean if he is here, why don't you
23 bring him in at ten of two, we will do it really quickly, and
24 then we will finish with Ms. Walch.

25 MR. SCHWARTZ: I don't know if anyone else intends to

I6C7GAL4

Walch - Cross

1 cross her, but I can't have more than 15 minutes, if that,
2 left.

3 MS. MERMELSTEIN: OK.

4 MR. QUIGLEY: Let's just do it before lunch.

5 MS. MERMELSTEIN: So we will have him here just before
6 two.

7 THE COURT: At 1:50. Thank you.

8 (Luncheon recess)

9 (Continued on next page)

I6CJGAL5

Martin - direct

1 AFTERNOON SESSION

2 1:50 pm

3 (Trial resumes)

4 (In open court; jury not present)

5 THE COURT: You may be seated. Thank you. I think
6 everyone is here. Does Mr. Martin have an attorney here?

7 MS. MERMELSTEIN: He has an attorney, but he is not
8 here. It is Mr. Cecutti, who is on trial himself.

9 THE COURT: Okay. Do you want to proceed with him now
10 with respect to the grant of immunity?

11 MS. MERMELSTEIN: Yes, I am ready, your Honor.

12 THE COURT: Okay.

13 FRANCISCO JOSE MARTIN FERNANDEZ,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MERMELSTEIN:

18 Q. Mr. Martin, did you receive a subpoena to testify here
19 today?

20 A. Yes.

21 Q. Did you previously indicate that you would exercise your
22 Fifth Amendment right against self-incrimination if subpoenaed
23 to testify?

24 A. Yes.

25 Q. Are you now formally exercising your Fifth Amendment rights

I6CJGAL5

Martin - direct

1 against self-incrimination?

2 A. Yes.

3 MS. MERMELSTEIN: The government respectfully requests
4 that the court enter the immunity order.

5 THE COURT: Yes, I have signed the order and it will
6 go into effect. I think that is it.

7 MS. MERMELSTEIN: Thank you. Mr. Martin, you can step
8 out until you're called.

9 (Witness excused)

10 THE COURT: Are we ready for the jury?

11 MS. MERMELSTEIN: Your Honor, one quick issue just to
12 flag. Pursuant to the parties' agreements last night, Mr.
13 Schwartz flagged to the government a non-impeachment exhibit he
14 intended to use with Mr. Martin, as did Mr. Touger.

15 We haven't received any -- Ms. Notari, I assume she is
16 not using any. I have two issues to note with respect to Mr.
17 Schwartz. One is that Defense Exhibit 4904 is an Instagram
18 post from the account of Monet Berger. The government, as your
19 Honor will recall, moved to preclude all of the Monet Instagram
20 accounts, and Mr. Schwartz in his letter teeing up the
21 outstanding legal issues, is indicating this wouldn't arise
22 until the case defense case. If you want to know if we are
23 going to publish this, we won't publish it now.

24 MR. SCHWARTZ: That is exactly right, I will do the
25 picture without --

I6CJGAL5

Walch - cross

1 MS. MERMELSTEIN: And I will note Government Exhibit
2 508 is the account signature card for an account in the name of
3 Seymour Capital that Gary Hirst is the signatory on. I don't
4 think Mr. Martin has any first-hand knowledge of this, so if
5 you want to inquire, that is fine. I am not sure the document
6 will be appropriate. Let's see how it goes.

7 MR. SCHWARTZ: That is fine. We'll see.

8 THE CLERK: We are missing one juror. I will go to
9 security and see if she is there.

10 THE COURT: Thank you. (Pause)

11 (Jury present)

12 THE COURT: You may be seated.

13 CROSS-EXAMINATION

14 CROSS-EXAMINATION continued

15 BY MR. SCHWARTZ:

16 Q. Good afternoon, Ms. Walch. I am sorry to make you spend
17 your lunch break here. I have just a few more questions for
18 you.

19 When we left off, we were looking at, Mr. Jackson,
20 just for the witness, Judge Abrams and the lawyers, Exhibit
21 1402. We were talking about the legal opinion letter that
22 FINRA received about whether the WLCC bonds were municipal
23 securities or sovereign. Do you recall that?

24 A. Yes.

25 Q. Looking at the document in front of you, does this refresh

I6CJGAL5

Walch - cross

1 your recollection that the law firm that offered the opinion
2 was Hunter Taubman Fisher?

3 A. Yes.

4 Q. Thank you. You can take that down.

5 Now, ultimately FINRA concluded that the bonds were
6 sovereign, not municipal, right?

7 A. Correct.

8 Q. And so after several months of discussions with Burnham
9 Burnham Securities and consultation internally within FINRA,
10 consultation with Morgan Stanley, research on Blumberg,
11 discussions with the SEC, FINRA reached the conclusion that,
12 therefore, the bonds were not allowable for net capital
13 purposes, true?

14 A. Yes.

15 Q. And that conclusion that the WLCC bonds were going to be
16 non-allowable for net capital purposes was conveyed to Burnham
17 Securities in a phone call on January 11th of 2016, true?

18 A. I recall that we had a conversation in January. I don't
19 recall the exact date.

20 Q. Let me show you Exhibit 1078.

21 MR. SCHWARTZ: This is in evidence, correct?

22 MS. MERMELSTEIN: Yes.

23 MR. SCHWARTZ: Thank you. You can publish this to the
24 jury. If you can go to Page 2, please, Mr. Jackson and if you
25 blow up the bottom language there.

I6CJGAL5

Walch - cross

1 BY MR. SCHWARTZ:

2 Q. You see it says the firm was made aware of the unallowable
3 asset status of the bond in a phone conversation with the SEC
4 and FINRA on January 11th, 2016. Did I read that correctly?

5 A. Yes.

6 Q. So this is when FINRA and the SEC conveyed their conclusion
7 to Burnham Securities that the bonds were non-allowable for net
8 capital purposes, correct?

9 A. Yes, the final decision, yes.

10 Q. You can take that down.

11 To be clear, when FINRA made that decision, Burnham
12 Securities abided by it, true?

13 A. Yes.

14 Q. It stopped counting the bonds towards its net capital,
15 correct?

16 A. Yes.

17 Q. I am sorry?

18 A. Yes.

19 Q. Burnham Securities filed a notification that we just looked
20 at to FINRA, indicating that the firm had fallen below the net
21 capital requirement, true?

22 A. Correct.

23 Q. And it filed the notification even though FINRA was
24 obviously aware of that fact because there were those
25 conversations, true?

I6CJGAL5

Walch - cross

1 A. Would you repeat that.

2 Q. Burnham Securities filed the notification of net capital
3 deficiency even though FINRA was obviously aware that they were
4 net capital deficient at that point, true?

5 A. Yes, because they needed to file the notification.

6 Q. Exactly. That was itself a regulatory requirement that
7 they file that notification, right?

8 A. Yes.

9 Q. Immediately after the bonds were reclassified as
10 non-allowable, Burnham Securities replaced the bonds with cash
11 in order to meet its net capital requirements, true?

12 A. Yes.

13 Q. I want to just talk about Bonwick Capital for one second.

14 A. Sure.

15 Q. You did not supervise Bonwick. Is that right?

16 A. Correct.

17 Q. But in the course of preparing to come testify today, you
18 familiarized yourself with FINRA's records concerning Bonwick,
19 true?

20 A. I was aware of Bonwick before a couple of days ago, as you
21 stated, so I knew about Bonwick before.

22 Q. You knew about it in part because they had a very similar
23 issue with the WLCC bonds, right?

24 A. Correct, and I share information with my colleague, so we
25 were aware of it.

I6CJGAL5

Walch - cross

1 Q. Right. FINRA was coordinating internally as it was dealing
2 with this issue?

3 A. No, because Burnham Securities told us that there was
4 another broker-dealer that actually has a similar bond and that
5 they were to sell the \$100,000 worth of bonds, so they brought
6 that to my attention.

7 Q. Burnham Securities brought that fact to your attention,
8 that Bonwick had these bonds?

9 A. That another broker-dealer has the bonds and it was
10 Bonwick.

11 Q. By the way, who was it at Burnham Securities that FINRA was
12 speaking to throughout this process?

13 A. We speak to both individuals, Nolan Sheehan and Marcelle
14 Devine.

15 Q. Ms. Devine is what is called a FIN OP for Burnham
16 Securities. Is that right?

17 A. Yes.

18 Q. What is a FIN OP?

19 A. Basically a FIN OP is a person that actually prepared the
20 focus report and the filings and submit that to FINRA.

21 Q. In fact, just yesterday you checked FINRA's files and
22 confirmed that Ms. Devine was the person who filed Burnham
23 Securities' focus reports that you looked at on your direct
24 examination, true?

25 A. Yes.

I6CJGAL5

Walch - cross

1 Q. Who was it that filed Bonwick Capital's focus reports?

2 A. I think if it is -- his name was Richard Feldman, I think
3 it is.

4 Q. Thank you.

5 So going back to the Bonwick, you know and you
6 reviewed on direct examination that Bonwick was having trouble
7 meeting its net capital, was close to its net capital
8 requirement for a few months prior to May 2015, correct?

9 A. Yes.

10 Q. In May 2015, Bonwick began counting its own WLCC bonds
11 towards its net capital requirement, correct?

12 A. Correct.

13 Q. And just as with Burnham Securities, after Bonwick included
14 the bonds in its net capital calculation, that started a
15 process of interaction between FINRA and Bonwick over whether
16 the bonds were allowable, true?

17 A. Yes.

18 Q. And that process, I won't go through it, but it was quite
19 similar to the process that FINRA went through with Burnham
20 Securities, true?

21 A. Yes.

22 Q. And that also took a period of several months, correct?

23 A. Yes.

24 Q. That also involves an outside lawyer for Bonwick Capital
25 submitting an opinion letter that the WLCC bonds were municipal

I6CJGAL5

Walch - cross

1 bonds for net capital purposes?

2 MS. TEKEEI: Objection.

3 A. I can't recall that.

4 THE COURT: Sustained.

5 BY MR. SCHWARTZ:

6 Q. Well, in the course of the communications between FINRA and
7 Bonwick Capital, did FINRA receive correspondence from an
8 outside lawyer on behalf of Bonwick Capital?

9 A. I don't recall that they did because I wasn't directly -- I
10 wasn't the manager for --

11 Q. You don't.

12 (Multiple voices)

13 MR. SCHWARTZ: Let me show you just for the witness,
14 Judge Abrams and the lawyers Exhibit 4132. Take a moment to
15 read that to yourself, please.

16 MS. TEKEEI: Your Honor, we object to this. I think
17 she has already answered that she didn't know at the time.

18 MR. SCHWARTZ: She said she didn't recall. I am just
19 refreshing her recollection.

20 THE COURT: You can refresh her recollection, but
21 let's not get into the document which is hearsay.

22 MR. SCHWARTZ: Correct, correct. Just read it to
23 yourself.

24 BY MR. SCHWARTZ:

25 Q. The question is, does this remind you that a lawyer

I6CJGAL5

Walch - cross

1 submitted a letter on behalf of Bonwick?

2 A. It doesn't remind me, so showing me that here, this
3 wasn't --

4 Q. I am just asking for your memory. If you don't remember
5 it, that is fine. You can take that down.

6 The point is at the end of the process with Bonwick,
7 FINRA came to the same conclusion, right, which is that the
8 bonds were not allowable?

9 A. Yes.

10 Q. Just as Burnham Securities had, Bonwick abided by that
11 decision, correct?

12 A. Yes.

13 Q. And it corrected its net capital deficiency, true?

14 A. I think it did.

15 Q. Now, I just want to be clear about something. In April
16 2015, before the bonds were used for net capital --

17 A. Ah-huh.

18 Q. -- Burnham Securities was meeting its net capital
19 requirements, true?

20 A. Yes.

21 Q. Its net capital requirement was a hundred thousand dollars,
22 true?

23 A. Yes.

24 Q. And its actual net capital was about 230 percent of its
25 minimum requirement, correct?

I6CJGAL5

Walch - cross

1 A. I don't recall what the percentage was.

2 Q. So let me show you Exhibit 1085 in evidence, so this can go
3 to the jury, please, Mr. Jackson. If you turn to Page 5, I
4 believe, and blow up the top half.

5 Q. So excess net capital, looking at Line 14, was \$130,000,
6 true?

7 A. Yes.

8 Q. So that's about 230 percent of the minimum net capital for
9 April 2015, correct?

10 A. Yes, ah-huh, yes.

11 Q. You can take that down.

12 Now, the following month, May 2015, is when Burnham
13 Securities started counting the WLCC bonds towards its net
14 capital requirement, true?

15 A. Yes.

16 Q. And you understood that it was counting about \$2.6 million
17 in WLCC bonds towards net capital?

18 A. Yes.

19 Q. In its May 2015 focus report, Burnham Securities,
20 Incorporated reported net capital of more than \$3.7 million,
21 correct?

22 A. Yes.

23 Q. And that was significantly more than was required, true?

24 A. Yes.

25 Q. And even if you discount the bonds entirely, \$2.6 million,

I6CJGAL5

Walch - cross

1 they were at \$1.1 million net capital, true? 1.2 million.

2 Excuse me.

3 A. Yes, because I think they had other securities listed on
4 their focus report.

5 Q. So even forgetting about the bonds entirely, in May 2015
6 when Burnham Securities, Incorporated started counting the WLCC
7 bonds as allowable assets, they were over 1,000 percent of the
8 minimum net capital requirement, true?

9 A. Yes, at that point.

10 MR. SCHWARTZ: Thank you very much. I don't have any
11 other questions right now.

12 THE COURT: All right. Any additional cross from
13 anyone?

14 MR. TOUGER: Very briefly, your Honor.

15 THE COURT: Yes.

16 CROSS EXAMINATION

17 BY MR. TOUGER:

18 Q. Good afternoon, Ms. Walch.

19 A. Good afternoon.

20 Q. You never spoke to John Galanis about this investigation,
21 did you?

22 A. No, I haven't spoke to him.

23 Q. You never got any emails from John Galanis about this
24 investigation, did you?

25 A. No.

I6CJGAL5

Walch - cross

1 Q. You never met with John Galanis?

2 A. No.

3 THE COURT: Thanks. Ms. Notari or Mr. Hassan?

4 CROSS EXAMINATION

5 BY MR. HASSAN:

6 Q. Good afternoon, Ms. Walch.

7 A. Good afternoon.

8 Q. I am Abraham Hassan. I am representing Bevan Cooney here.

9 You didn't meet Bevan Cooney or --

10 A. I can hardly hear you.

11 Q. You never met Bevan Cooney?

12 A. No.

13 Q. You haven't really discussed Bevan Cooney?

14 A. No.

15 Q. He is not involved in any of the testimony that you just
16 talked about?

17 MS. TEKEEI: Objection.

18 THE COURT: Sustained.

19 BY MR. HASSAN:

20 Q. You didn't discuss him specifically?

21 A. Just now?

22 Q. Just now or with the government, in any of your meetings
23 with the government?

24 A. No.

25 MR. HASSAN: No further questions.

I6CJGAL5

Martin - direct

1 THE COURT: All right. Any redirect?

2 MS. TEKEEI: No further questions, your Honor.

3 THE COURT: Thank you. You may step down. Thank you.

4 (Witness excused)

5 FRANCISCO JOSE MARTIN FERNANDEZ,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MERMELSTEIN:

10 Q. Good afternoon. Could you say your name one more time.

11 A. Francisco Jose Martin Fernandez.

12 Q. Good afternoon.

13 MS. MERMELSTEIN: Before I call Mr. Martini, I was
14 going to read a stipulation.

15 THE COURT: Go ahead.

16 MS. MERMELSTEIN: I will do that anyway now.

17 It is hereby stipulated and agreed by and among the
18 United States of America, by Robert Khuzami, Attorney for the
19 United States, acting under authority conferred by 28 U.S.C.
20 Section 515, Rebecca Mermelstein, Brendan Quigley and Negar
21 Tekeei, Assistant United States Attorneys, of counsel; and John
22 Galanis, a/k/a Yanni, the defendant, by and with the consent of
23 his attorney, David Touger; Devon Archer, the defendant, by and
24 with the attorney of his attorney, Mr. Schwartz; and Bevan
25 Cooney, the defendant, by and with the consent of his attorney,

I6CJGAL5

Martin - direct

1 Paula Notari, that:

2 Government Exhibits 100 and 101 are true and correct
3 copies of records that were made, kept and maintained in the
4 regular course of business of the Waterworks and sewer board of
5 the city of Birmingham and were made by persons with knowledge
6 of or made from information transmitted or made with
7 information transmitted by a person with knowledge of the
8 information shown and were made at or near the time that the
9 information became available.

10 Government 102 is a true and correct copy of a March
11 17th, 2015 letter from Hughes Capital Management to Macaroy, M
12 A C A R O Y, Underwood, general manager of the Birmingham
13 Waterworks Board.

14 Government Exhibit 104 is a true and accurate copy of
15 an email from-mail account of Macaroy Underwood, general
16 manager of Waterworks and Birmingham..

17 Government Exhibit 110 is a true and correct copy of
18 records made kept and maintained in the regular course of
19 business of the Chicago Transit Authority Retiree Health Care
20 Trust and were made by persons with knowledge of or made with
21 information transmitted with knowledge of the information shown
22 and were made at or near the time the information became
23 available.

24 Government Exhibits 120, 121, 124 and 125 are true and
25 correct copies of records that were made, kept and maintained

I6CJGAL5

Martin - direct

1 in the regular course of business of the Omaha School
2 Employees, here OSES, and made by persons with knowledge of or
3 made with information transmitted by persons with knowledge of
4 the information shown and were made at or near the time the
5 information became available.

6 Government Exhibit 122 is a true and accurate copy of
7 the private placement memorandum for the Atlantic Global Yield
8 Opportunity Fund LP.

9 Government Exhibit 123 is a true and accurate copy of
10 the managed account agreement between the Atlantic Global Yield
11 Opportunity Master Fund LP, Atlantic GYOF, LLC Atlantic Asset
12 Management, LLC and Mill Street Capital Management, LLC.

13 Copies of Government Exhibits 122 and 123 were
14 provided to OSES by Atlantic Capital management.

15 Government Exhibits 130 through 132 and 134 through
16 136 are true and accurate copies of the investment management
17 agreement between Michelin North America, Inc. Master Trust
18 Investment Committee and Hughes Capital Management, Inc. and
19 amendments thereto and were in effect at all relevant times.

20 Government Exhibits 133 and 137 are true and correct
21 copies of records that were made kept and maintained in the
22 regular course of business of the Michelin North America, Inc.
23 Master Trust and were made by persons with knowledge of or made
24 from information transmitted by persons with knowledge of the
25 information shown and were made at or near the time the

I6CJGAL5

Martin - direct

1 information became available.

2 Government Government Exhibit 140 is a true and
3 correct copy of the investment council agreement between Hughes
4 Capital messenger meant Inc. and management of ILA Managed
5 Health Care Trust Fund and was in effect at all relevant times.

6 Government Exhibit 141 is a true and correct copy of
7 records that were made, kept and maintained in the regular
8 course of business of the management of ILA Managed Health Care
9 Trust Fund and were made by persons with knowledge of or made
10 from information transmitted by persons with knowledge of the
11 information shown and were made at or near the time the
12 information became available.

13 Government Exhibits 150 through 152 are true and
14 correct copies of records that were kept, made, kept and
15 maintained in the regular course of business of the Milk
16 Drivers and Dairy Employees Local No. 246 Pension Fund and were
17 made by persons with knowledge of, or made from information
18 transmitted by persons with knowledge of the information shown
19 and were made at or near the time the information became
20 available.

21 Government Exhibits 160 and 161 are true and correct
22 copies of records that were made, kept and maintained in the
23 regular course of business of the Philadelphia Housing
24 Authority Pension Board, PHA, and the Connecticut General life
25 Insurance Company, subsequently taken over by Prudential,

I6CJGAL5

Martin - direct

1 through whom PHA entered into an investment management
2 agreement with Hughes Capital Management, Inc. and were made by
3 persons with knowledge of or made from information transmitted
4 by persons with knowledge of the information shown and were
5 made at or near the time the information became available.

6 Government Exhibits 170 through 184 are true and
7 accurate copies of emails from the email account of Leo
8 Griffin, Executive Director of the Richmond Retirement System
9 and/or Philip Guess, Counsel to the Richmond Retirement System.

10 Government Exhibit 185 is a true and correct copy of
11 records that were made, kept and maintained in the regular
12 course of business of the Richmond Retirement System and were
13 made by persons with knowledge of or made from information
14 transmitted by persons with knowledge of the information shown
15 and were made at or near the time the information became
16 available.

17 Government Exhibits 190 and 191 are true and correct
18 copies of records made kept and maintained in the regular
19 course of business of the Terrapin Insurance Company and made
20 by persons with knowledge of or made from information of people
21 with knowledge of the information shown and were made at or
22 near the time the information became available.

23 Government Exhibit 192 is a true and accurate copy of
24 a January 21, 2015 letter to Michelle Morton and Richard Deary
25 from Steven S. Schultz, counsel to Terrapin Insurance Company.

I6CJGAL5

Martin - direct

1 Government Exhibit 195 is a true and correct copy of
2 records that were made, kept and maintained in the regular
3 course of business of Hughes Capital Management and were made
4 by persons with knowledge of or made from information
5 transmitted by persons with knowledge of the information shown
6 and were made at or near the time the information became
7 available.

8 Lastly, Government Exhibit 196 is a true and correct
9 copy of records that were made kept and maintained in the
10 regular course of business of the Washington Suburban Sanitary
11 Commission Employees Retirement Plan, and were made by persons
12 with knowledge of or made with information, the information
13 shown and were made at or near the time the information became
14 available.

15 It is further stipulated and agreed by and among these
16 parties that this stipulation is admissible as a government
17 exhibit at trial. The government offers Government Exhibit
18 4503, which is the stipulation and the exhibits referenced
19 therein; that is to say, Government Exhibits 100, 101, 102,
20 104, 110, 120, 121, 124, 125, 122, 130 to 132, 134 to 136, 133
21 and 137, 140, 141, 150 through 152, 160 and 161, 170 through
22 184, 185, 190, 191, 192, 195 and 196.

23 THE COURT: They will all be admitted.

24 (Government's Exhibit 4503 received in evidence)

25 MS. MERMELSTEIN: May I just approach, your Honor?

I6CJGAL5

Martin - direct

1 THE COURT: Yes.

2 BY MS. MERMELSTEIN:

3 Q. Good afternoon again.

4 A. Good afternoon.

5 Q. What is your full legal name?

6 A. Francisco Jose Martin Fernandez.

7 Q. Do you have any shorter versions of that name?

8 A. Yes, Francisco Martin.

9 Q. Why do you go by Francisco Martin?

10 A. When I emigrated into the United States, I chose to use a
11 shorter version of my name.

12 Q. How come?

13 A. It was cumbersome to use my full name, full name every
14 single time I signed a letter or something of that matter.

15 Q. Where are you born?

16 A. Born in Basil, Switzerland.

17 Q. Where do you currently reside?

18 A. In Spain.

19 Q. What is your native language?

20 A. I have two; Swiss, German and Spanish.

21 Q. Are you comfortable testifying in English?

22 A. Yes, I do.

23 Q. Are you familiar with bonds issued by the Wakpamni Lake
24 Community Corporation?

25 A. Yes.

I6CJGAL5

Martin - direct

1 Q. What, if any, involvement did you have with those bonds?

2 A. I was hired by Jason Galanis as an investment manager to
3 manage some of the proceeds.

4 Q. Did you actually manage the proceeds?

5 A. No.

6 Q. Were you paid for signing documents indicating that you
7 managed the proceeds in?

8 A. Yes.

9 Q. Are you familiar with a stock called Code Rebel?

10 A. Yes.

11 Q. What, if any, involvement did you have with that?

12 A. I was asked by Jason Galanis and Gary Hirst to open several
13 offshore accounts and offshore entities to hold that
14 certificate.

15 Q. Meaning shares of Code Rebel?

16 A. Correct.

17 Q. Did there come a time when you sold those shares?

18 A. Yes.

19 Q. What did you do with the proceeds?

20 A. I wired them out to different attorneys, escrow companies
21 and such.

22 Q. Did you use some of the proceeds of those Code Rebel
23 shares, sales to make interest payments on the Wakpamni bonds?

24 A. Yes.

25 Q. Let's back up for a minute before we delve into the

I6CJGAL5

Martin - direct

1 Wakpamni bonds. What is your educational background?

2 A. I have a masters in economics.

3 Q. Approximately what year did you obtain that degree?

4 A. 1994.

5 Q. What did you do when you finished your education?

6 A. I did a postgraduate program at UBS in Zurich.

7 Q. How long was that postgraduate program?

8 A. Two years.

9 Q. What did you do when you FBI finished it?

10 A. I was hired by SBC Warburg Dillon Read.

11 Q. Would you spell it, please.

12 A. D I L L O N, R E A D.

13 Q. Warburg was the challenged one for spelling.

14 A. W A R B U R G.

15 Q. Where did you go when you completed that?

16 A. I started my position at Bank --

17 Q. Where was that?

18 A. In San Francisco.

19 Q. How long did you stay there?

20 A. Five years.

21 Q. What happened after that?

22 A. After that, I started brokerage company.

23 Q. What was that called?

24 A. MAM Group.

25 Q. What kind of work did it do?

I6CJGAL5

Martin - direct

1 A. We were facilitators by issuing credit lines to brokers,
2 real estate brokers, packaged mortgages into small securities
3 and sold them off.

4 Q. Was that mortgage involved in the mortgage industry?

5 A. Yes.

6 Q. What happened to that business?

7 A. During the sub-crime crisis around 2008, it folded.

8 Q. What did you do after that?

9 A. After that, I started MK Capital Partners.

10 Q. What was MK Capital Partners?

11 A. It was a money management firm advisory firm that I
12 started.

13 Q. How long did you devote yourself to that?

14 A. It is actually an ongoing business. I tried to get back
15 into the wealth management business.

16 Q. Did there come a time following starting that business when
17 you also obtained employment for an employer?

18 A. Yes.

19 Q. When was that?

20 A. That was around 2010 to 2011 with UBS.

21 Q. What happened to that job?

22 A. I was let go.

23 Q. Why?

24 A. Because I marketed my services to the public without
25 getting supervisory agreement.

I6CJGAL5

Martin - direct

1 Q. Are you testifying here today pursuant to an immunity
2 order?

3 A. Yes.

4 Q. Did you refuse to testify absent the entry of such an
5 order?

6 A. Yes.

7 Q. What is your understanding about whether your testimony
8 here today can be used directly against you in a criminal
9 prosecution in light of the immunity order?

10 A. I understand I can still be used against me.

11 Q. Sorry. Let me ask it one more time.

12 What is your understanding of whether your testimony
13 here today can be used against you in a criminal prosecution in
14 light of the immunity order that has been entered by the court?

15 A. Sorry. I understand what I say today here in court cannot
16 be used against me.

17 Q. Do you understand even with a grant of immunity, you can
18 still be prosecuted for the crimes you're about to discuss?

19 A. Yes, I understand that.

20 Q. What are you hoping about whether or not you'll be
21 prosecuted?

22 A. My hope is I am not going to get prosecuted.

23 Q. Has anyone made you any promises to that effect?

24 A. No.

25 Q. Are you here today pursuant to a safe passage letter?

I6CJGAL5

Martin - direct

1 A. Yes.

2 Q. What does that mean?

3 A. It means I can travel to the United States and leave the
4 United States without getting arrested.

5 Q. Does it allow you to travel indefinitely in the United
6 States or for the time period you're here for your testimony?

7 A. Just for the time period I am here.

8 Q. Does it protect you from being arrested once that time
9 period has expired?

10 A. No.

11 Q. What is your understanding of whether the immunity order
12 protects you if you lie during your testimony today?

13 A. My understanding is it doesn't.

14 Q. Are you familiar with an individual named Jason Galanis?

15 A. Yes.

16 Q. When did you first meet him?

17 A. On about 2003, 2004.

18 Q. What were the circumstances?

19 A. I was introduced to Jason by my then wife.

20 Q. Prior to 2014-ish, did you have any business relationship
21 with Jason Galanis or was it social?

22 A. Mostly social.

23 Q. Are you familiar something called Forces Vives?

24 A. Yes.

25 Q. What is that?

I6CJGAL5

Martin - direct

1 A. It is a Swiss insurance company.

2 Q. What involvement did you have with it?

3 A. I knew the owners of Forces Vives, and I understood that
4 they wanted to sell the company.

5 Q. What did you do about that?

6 A. I introduced the business opportunity to Jason Galanis.

7 Q. Why?

8 A. Because he had mentioned he was interested in purchasing
9 offshore insurance companies.

10 Q. What did you hope to get from making the introduction, if
11 anything?

12 A. I was hoping to get a finder's fee from the transaction.

13 Q. Did the deal go through?

14 A. No.

15 Q. Why not?

16 A. There was a discrepancy in terms of the purchase price that
17 Jason Galanis was willing to pay and what Forces Vives was
18 willing to sell the company for.

19 Q. At the time that you brought that deal to Jason Galanis,
20 were aware of any problems Jason Galanis had had in business?

21 A. Yes.

22 Q. What was your understanding of his problems?

23 A. My understanding was that he falsified statements to the
24 SEC.

25 Q. Did you consider that a concern in doing business with him?

I6CJGAL5

Martin - direct

1 A. I didn't.

2 Q. You did not?

3 A. I did not.

4 Q. Why not?

5 A. Because this particular transaction was a transaction that
6 was just transactional, and I was not going to be involved on a
7 day-to-day business with him.

8 Q. Turning your attention to 2014, did there come a time when
9 Jason Galanis proposed a business transaction to you?

10 A. Yes.

11 Q. What was your personal situation at that point in time?

12 A. I was in financial distress.

13 Q. Had you been employed since being let go from UBS?

14 A. No.

15 Q. What was your marital status at that time?

16 A. I was divorced.

17 Q. Do you have any children?

18 A. Yes.

19 Q. How many?

20 A. Three.

21 Q. Were you paying child support?

22 A. At that time, no.

23 Q. Had you shared your general situation with Jason Galanis?

24 A. Yes.

25 Q. Where were you living at the point in time he brought this

I6CJGAL5

Martin - direct

1 proposed transaction to you?

2 A. In Italy.

3 Q. Why?

4 A. Because of my financial situation, I was living at my
5 mother's at the time.

6 Q. What did Galanis tell you about his proposed transaction?

7 A. He mentioned he was going to be involved with a tribal bond
8 issue and though some of the proceeds were going to be managed
9 by a company called PEM, or Private Equity Management, and I
10 was going to be the manager of that entity.

11 Q. Did you have just one conversation with Jason Galanis or
12 many conversations with him about this transaction?

13 A. Many.

14 Q. What did Jason Galanis tell you in the course of those
15 conversations about his role in the transaction?

16 A. His role, as he told me, was that he was controlling the
17 issue of the tribal bonds.

18 Q. What, if anything, did Galanis tell you about the role of
19 an annuity provider in the transaction?

20 A. He mentioned that the proceeds of the municipal bond issue
21 were to go into an annuity provider and then ultimately the
22 annuity provider would then select investment managers.

23 Q. Did he tell you the name of the annuity provider?

24 A. Yes.

25 Q. What was it?

I6CJGAL5

Martin - direct

1 A. Wealth Assurance.

2 Q. Was he more specifically than that or just, "Wealth
3 Assurance"?

4 A. Just "Wealth Assurance."

5 Q. Did you have any discussion at that time about Jason
6 Galanis' role specifically with respect to Wealth Assurance?

7 A. Yes, my understanding was that he was also an investor into
8 Wealth Assurance.

9 Q. So if there was already an annuity provider in place, why
10 was there a need for an investment manager?

11 A. Usually what happens is when an annuity provider receives
12 proceeds from a bond issue, the annuity provider is tasked to
13 find the several investment managers that would then manage the
14 money.

15 Q. So were you going to be the only investment manager or one
16 of many?

17 A. One of many.

18 Q. What, if anything, did Jason Galanis tell you about how you
19 would be compensated?

20 A. He mentioned I would be compensated right off the bat after
21 signing the investment management agreement and then a second
22 tranche of payment when the issue was traded.

23 Q. How much were those payments going to be?

24 A. The first tranche was 75,000, and then again another
25 75,000.

I6CJGAL5

Martin - direct

1 Q. What, if anything, did Jason Galanis tell you about the
2 role of any other entities in the bond transaction?

3 A. He mentioned Burnham Securities.

4 Q. What was Burnham Securities' role?

5 A. Burnham Securities' role was to be the underwriter of the
6 muni issue.

7 Q. What, if anything, did Jason Galanis tell you about his own
8 involvement in Burnham Securities?

9 A. He mentioned that he was also an investor into Burnham
10 Securities.

11 Q. Did you come to learn from Jason Galanis of any other
12 individuals involved in Burnham Securities?

13 A. Yes.

14 Q. Who was that?

15 A. That was Hugh Dunkerley and Devon Archer.

16 Q. What did he tell you about their respective roles?

17 A. He mentioned that Hugh Dunkerley was more involved in the
18 day-to-day business and that Devon Archer was an investor into
19 Burnham Securities.

20 Q. Did there come a time that you agreed to enter into the
21 investment management agreement?

22 A. Yes.

23 MS. MERMELSTEIN: Let me direct your attention to
24 Government Exhibit 1601 just for the parties, the court and the
25 witness, please. There is also a hard copy in front of you if

I6CJGAL5

Martin - direct

1 that is easier.

2 Q. Do you recognize that document?

3 A. Yes.

4 Q. What is that?

5 A. That is an email from Jason Galanis to me.

6 MS. MERMELSTEIN: The government offers Government
7 Exhibit 1601.

8 MS. NOTARI: No objection.

9 MR. SCHWARTZ: No objection.

10 THE COURT: It will be admitted.

11 (Government's Exhibit 1601 received in evidence)

12 MS. MERMELSTEIN: If we can now publish that to the
13 jury, please.

14 BY MS. MERMELSTEIN:

15 Q. Directing your attention to this email from Jason Galanis
16 to you on August 26th of 2014, let me ask you to read the
17 email.

18 A. Francisco, please see attached the signature page for the
19 investment management agreement. It needs to be countersigned.
20 We included the full agreement in Word as well for your files.

21 Also attached is the annuity that needs to be signed
22 by the investment manager on behalf of the client. I will
23 arrange for Wealth Assurance to also countersign it after
24 receiving your signatures. Once this is done, the money will
25 be wired by US Bank to Wealth Assurance today. You will be

I6CJGAL5

Martin - direct

1 wired tomorrow. Thanks, Jason.

2 Q. Did there come a time you signed the investment management
3 agreement?

4 A. Yes.

5 Q. Let me direct your attention to Government Exhibit 210 in
6 evidence. Do you recognize that?

7 A. Yes.

8 Q. What is that?

9 A. That is the investment management agreement that I signed.

10 Q. Looking at the first page of this agreement, what is the
11 date of this agreement?

12 A. It's August 26th, 2014.

13 Q. Who are the parties to the agreement?

14 A. That would be Private Equity Management Limited and the
15 Wakpamni Lake Community Corporation.

16 Q. If we can pull up Page 9 of this document, please. Is that
17 your signature?

18 A. Yes.

19 Q. Under your signature it says, "managing director."

20 Were you, in fact, the managing director of Private
21 Equity Management?

22 A. No.

23 Q. Had you, prior to receiving this investment management
24 agreement, had you heard of Private Equity Management?

25 A. No.

I6CJGAL5

Martin - direct

1 Q. Just so we are clear, when you mentioned Private Equity
2 Management before, in terms of timing, you only learned about
3 that entity after receiving the investment management
4 agreement?

5 A. Correct.

6 Q. Did you receive -- take that down -- did you receive the
7 agreed-upon payment upon signing the agreement?

8 A. Yes.

9 Q. Who paid you?

10 A. That was an entity by the name of Thorsdale.

11 Q. What was Thorsdale?

12 A. Thorsdale was the private trust company set up by Jason
13 Galanis.

14 Q. Did you also receive the agreed upon payment once the bond
15 transaction actually was effectuated?

16 A. Yes.

17 Q. Again where did that come from in?

18 A. The same, Thorsdale.

19 Q. Did it make sense to you that the payments you received as
20 investment manager for the annuity for the Wakpamni Lake
21 Community Corporation were coming from a Jason Galanis entity?

22 MR. TOUGER: Objection, your Honor.

23 THE COURT: Rephrase that.

24 BY MS. MERMELSTEIN:

25 Q. What did you make of the source of the funds used to pay

I6CJGAL5

Martin - direct

1 you?

2 MR. TOUGER: Objection.

3 THE COURT: I'll allow it.

4 Q. You can answer the question.

5 A. I can answer?

6 Well, usually you get paid by the company that
7 actually hires you. In this case, it was not the case.

8 Q. In the weeks following the execution of that agreement, did
9 you learn more about Jason Galanis' involvement in the annuity
10 provider in Wealth Assurance?

11 A. Yes.

12 Q. What did you learn?

13 A. That he was directly or indirectly controlling Wealth
14 Assurance.

15 Q. What did you understand about the propriety of Jason
16 Galanis controlling the issuing, the issuance of the bonds
17 being an investor in the placement agent and controlling the --

18 A. It was a conflict of interest.

19 Q. At the time that you agreed to serve as the investment
20 manager, you said you were living in Italy?

21 A. Yes.

22 Q. Did you remain in Italy?

23 A. No.

24 Q. Why not?

25 A. I was asked by Jason Galanis to come to California.

I6CJGAL5

Martin - direct

1 Q. Did you?

2 A. I did.

3 Q. When you arrived in California, did you receive any money
4 from the bond proceeds to invest?

5 A. No.

6 Q. Have you ever received any money from the bond proceeds to
7 invest?

8 A. No.

9 Q. Let me direct your attention to Government Exhibit 1604
10 just for the witness, the court and parties.

11 Do you recognize that email?

12 A. Yes, I do.

13 Q. What is that?

14 A. It's an email from Jason Galanis to me.

15 MS. MERMELSTEIN: The government offers Government
16 Exhibit 1604.

17 THE COURT: Any objection?

18 MR. SCHWARTZ: No objection.

19 MR. TOUGER: No.

20 THE COURT: 1604 will be admitted.

21 (Government's Exhibit 1604 received in evidence)

22 MS. MERMELSTEIN: Let's publish that to the jury.

23 BY MS. MERMELSTEIN:

24 Q. Let's start at the bottom of this email, the email from
25 Jared Galanis to Jason Galanis, CC'g Jay Galanis on September

I6CJGAL5

Martin - direct

1 29th of 2014. Let me ask you to read that email, please.

2 A. If we haven't already, we need to get Tim final signed
3 versions of the investment management agreement and the
4 annuity. Both are attached, let me know if you want me to
5 handle any part of organizing that.

6 Q. The email is addressed to Jason at holmbycompanies dot com?

7 A. That was an email that Jason used at the time.

8 Q. Who is Jared Galanis?

9 A. That is Jason Galanis' brother.

10 Q. Are you familiar with the email address Jay Galanis at me
11 dot com?

12 A. I have seen it.

13 Q. Do you know for sure who used it?

14 A. No.

15 Q. Where have you seen it?

16 A. I have seen it while I was at Jason Galanis' house on his
17 screen.

18 Q. Let's go to the top email now, please.

19 Let me ask you to read the email from Jason Galanis to
20 you, forwarding the below email.

21 A. Need your signature on the investment management agreement
22 attached. The other document is for Hugh to sign.

23 Q. If we can go to the first page of the attachment. What is
24 that?

25 A. That's the investment management agreement.

I6CJGAL5

Martin - direct

1 Q. What is the date of that investment management agreement?

2 A. That's September 26th, 2014.

3 Q. Is that a month after the first one?

4 A. Correct.

5 Q. Who were the parties for the investment management
6 agreement?

7 A. Private Equity Management, LLC and the Wakpamni Lake
8 Community Corporation.

9 Q. Are you familiar with what Private Equity is?

10 A. Yes.

11 Q. What is it?

12 A. It is usually a highly illiquid investment into a nonpublic
13 company.

14 Q. Let's go to Page 10 of this agreement or Page 10 of the
15 document, so it is Page 11 of the agreement probably.

16 Directing your attention to the last paragraph to the
17 middle part of the paragraph stating that the manager invests
18 in situations that may be overlooked by others including in
19 companies suffering from capital markets dislocation, financial
20 distress, complexity or negative market sentiment, are those
21 things all the same as Private Equity?

22 A. Yes.

23 Q. Are they sort of illiquid and/or risky?

24 A. Usually private equity investments are riskier, yes.

25 Q. Did it make sense to you to be investing annuity proceeds

I6CJGAL5

Martin - direct

1 from a bond in a risky or --

2 MR. TOUGER: Objection.

3 THE COURT: Why don't you rephrase that to kind of
4 make it make sense.

5 MR. TOUGER: May we approach?

6 THE COURT: Sure.

7 (Continued on next page)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I6CJGAL5

Martin - direct

1 (At sidebar)

2 MR. TOUGER: Your Honor, this is a negotiated -- as
3 Mr. Anderson testified to, negotiated (inaudible). This man is
4 not involved in this deal at all. He should not be allowed to
5 give his opinion, whether good or bad. This was negotiated
6 within WLCC, their attorneys and the attorneys on the other
7 side.

8 MR. SCHWARTZ: It is not relevant.

9 THE COURT: Why is his opinion about this relevant?

10 MS. MERMELSTEIN: The fact it was negotiate by
11 attorneys does not make it the fact that it makes sense. It
12 does not make sense and this -- he was purportedly the manager
13 charged with executing this strategy, and he understands that
14 the strategy doesn't make any sense into entering into an
15 agreement like that. He was an unindicted co-defendant in this
16 case who understood that this was a conflict of interest and it
17 doesn't make any sense and was a fraud. I will elicit all of
18 that because it is relevant to the existence of the conspiracy.

19 MR. TOUGER: It was negotiated deal. He has no right
20 to comment whether it was a good deal or not. His opinion is
21 not relevant. If you wanted to ask Mr. Anderson who negotiated
22 the deal, maybe. If you want to ask other attorneys or Mr.
23 Raines from yesterday, she didn't ask Mr. Raines this question
24 yesterday. There was no hiding this deal. This was the deal.
25 His opinion of the deal is completely irrelevant.

I6CJGAL5

Martin - direct

1 MR. SCHWARTZ: Also not the theory of the case chaged.

2 The thing that makes this criminal is undisclosed
3 conflicts and that Jason Galanis stole the money. The facial
4 economics if it had been invested in private equity, the
5 position is it wasn't, that is not criminal. There is no
6 testimony it is criminal. He couldn't testify it was criminal
7 and his testimony that it is unusual, it doesn't make sense is
8 not relevant.

9 MS. MERMELSTEIN: I don't agree with that. It is not
10 the theory that this is what makes this crime. I am not
11 suggesting that. It is an enormous effort to suggest this
12 looks totally fine to everybody and not a misappropriation.
13 There was no idea that something that didn't make sense. This
14 is a participant in the fraud who knew it didn't make sense,
15 and that is totally appropriate testimony.

16 Just so we are clear, you have additional questions
17 like this about the conflicts as they developed. I gather
18 there is no objection to him talking about his --

19 (Multiple voices)

20 MR. TOUGER: I object to the idea he would give his
21 opinion. If you want to ask him whether it is legal, I object.
22 If he wants to point out why he thinks it is a conflict, that
23 is different. He can't give a legal opinion.

24 MS. MERMELSTEIN: He can. He was a member of the
25 conspiracy, his understanding whether the conflict was legal --

I6CJGAL5

Martin - direct

1 MR. TOUGER: We are not there yet. The question is he
2 is giving an opinion whether he thought this was a good deal.
3 The people involved in negotiating this deal have all said they
4 thought it was a good deal, every single one of them. This
5 person is not involved in negotiations, doesn't represent any
6 parties, is not an expert, will be able to get up on the stand
7 and say this wasn't a good deal?

8 MS. MERMELSTEIN: He is a participant. He is a
9 participant. Of course his understanding about it is relevant.
10 Of course he is entitled to say what his understanding was.

11 THE COURT: I will allow it.

12 MR. SCHWARTZ: So on the conflicts, I don't have an
13 objection in principle to it. You have to lay a better
14 foundation that he has experience in these kinds of deals and
15 understands what a problematic conflict is.

16 MS. MERMELSTEIN: I don't agree. He is an unindicted
17 co-conspirator who understood there are inappropriate conflicts
18 of interest.

19 MR. SCHWARTZ: It has to be a correct understanding.
20 Someone who doesn't know the business may think something is a
21 problem. If you lay the foundation, which you can, then think
22 out the testimony.

23 MS. MERMELSTEIN: I already have. He talked about his
24 long history of working in the financial industry. I can ask
25 him in the course, if he is familiar with what the conflict is.

I6CJGAL5

Martin - direct

1 THE COURT: Do it anyway.

2 MR. TOUGER: If that question is being asked --
3 (Inaudible) -- talked to attorneys for anybody, has not talked
4 to anybody, it is his own personal opinion, no basis in
5 negotiating the fact, go into that. There is no basis for his
6 opinion.

7 MS. MERMELSTEIN: He made clear on direct he signed
8 the document that was sent to him, and if you want to draw out
9 that point, I have no objection.

10 MR. TOUGER: It should be clear that the question is
11 this is his personal opinion, not a legal opinion. This is his
12 personal opinion. He has no right to make a legal opinion.

13 THE COURT: You can ask that on cross-examination.

14 MR. TOUGER: He shouldn't be allowed to give legal
15 opinions to the jury. He is not a lawyer, he is not trained.

16 THE COURT: It will be clear it is not a legal
17 opinion. You can clarify that.

18 (Continued on next page)
19
20
21
22
23
24
25

I6CJGAL5

Martin - direct

(In open court)

BY MS. MERMELSTEIN:

Q. So what was your understanding of whether this investment strategy made sense for bond proceeds in any way?

A. Reading this, it says the client is a value-oriented investor, Private Equities usually is not considered that.

Q. Did it make sense with respect to bond proceeds to put them in something that was illiquid?

A. No.

Q. Why not?

A. Because the bond issue was to pay yield, and you cannot pay any yield by basically having illiquid investments.

Q. What do you mean by "yield"?

A. Interest payments.

Q. Prior to receiving this email from Jason Galanis, were you aware that Galanis was seeking to have you serve as the Private Equity Management manager with regard to a second bond issuance?

A. No.

Q. Were you aware that there was a second bond issuance?

A. No.

Q. At the time that you received this email, had you received any money from the first round of bonds to invest?

A. No.

Q. Let me direct your attention to Government Exhibit 1603

I6CJGAL5

Martin - direct

1 just for the witness, Court and the parties, please.

2 Do you recognize that?

3 A. Yes.

4 Q. What is it?

5 A. It's an email that I received from Jason Galanis.

6 MS. MERMELSTEIN: The government offers Government
7 Exhibit 1603.

8 THE COURT: Any objection?

9 MR. SCHWARTZ: No objection.

10 THE COURT: It will be admitted.

11 (Government's Exhibit 1603 received in evidence)

12 MS. MERMELSTEIN: If we can publish that to the jury,
13 please.

14 BY MS. MERMELSTEIN:

15 Q. Let's start at the bottom email from you to Jason Galanis
16 on October 3112 of 2014. Let me ask you to read the email.

17 A. Hey, Jason, I just looked at the original investment
18 management agreement sent to me on August 26th and the one you
19 just sent me which is dated September 26th. I just want to
20 make sure I understand this correctly since I'm signing this.
21 Is this for --

22 MS. MERMELSTEIN: We are having a screen problem, your
23 Honor.

24 THE COURT: Are you for the jurors?

25 JUROR: Yes. (Pause)

I6CJGAL5

Martin - direct

1 THE COURT: Give us one minute to try to work it out.

2 (Off-the-record discussion)

3 THE COURT: Raise your hand if your screen is working.

4 Okay. Good. Can you all look over other people's shoulders.

5 Thank you. Please proceed.

6 BY MS. MERMELSTEIN:

7 Q. Mr. Martin, let me ask you this --

8 A. Hey, Jason, I just looked at the original investment
9 management agreement sent to me on August 26th and the one you
10 just sent me which is dated September 26th. I just want to
11 make sure I understand this correctly since I am signing this.
12 Is this for another set of tranche placement? Please let me
13 know at your convenience.

14 Q. You email to Jason at Burnham Equity Partners dot com,
15 whose email address is that?

16 A. This is another email that Jason Galanis used.

17 Q. Do you know if there is a Burnham Equity Partners?

18 A. No.

19 Q. Let's go up to the top of the email, please. Let me ask
20 you to read his response to you.

21 A. Yes, another tranche we did with Devon.

22 Q. Had you ever spoken with Jason Galanis about an individual
23 named Devon?

24 A. Yes.

25 Q. Who was that?

I6CJGAL5

Martin - direct

1 A. He mentioned that Devon was a business partner and a very
2 well connected individual politically and also in the business
3 world.

4 Q. What was Devon's last name?

5 A. Archer.

6 Q. Did Jason Galanis say anything else about the nature of
7 their relationship?

8 A. He just mentioned that they were close.

9 Q. Did you sign the agreement attached to this email?

10 A. Yes.

11 Q. Did you ever receive any proceeds from the second round of
12 bonds to invest?

13 A. No.

14 Q. What ultimately happened to the Private Equity Management
15 agreement with the Wakpamni Lake Community Corporation?

16 A. It was nullified.

17 Q. If you weren't investing in the bond proceeds, what did you
18 do in California?

19 A. I was asked to do other things for Jason Galanis and Gary
20 Hirst.

21 Q. What were the things you were asked to do?

22 A. I was asked to open two offshore corporations and open
23 several brokerage accounts for those corporations.

24 Q. Who asked you to do that?

25 A. That was both Jason Galanis and Gary Hirst.

I6CJGAL5

Martin - direct

1 Q. What, if anything, were you told about the purpose of
2 creating these entities and opening these accounts?

3 A. I was told that the purpose was to hold shares of Code
4 Rebel.

5 Q. Where did you open, actually create the entities?

6 A. That was in the Seychelles.

7 Q. What are the Seychelles?

8 A. It is an island country that has very strict privacy laws.

9 Q. Why did you chose the Seychelles to create the entities?

10 A. I was asked to use a jurisdiction that did not necessarily
11 collaborate with the U.S.

12 Q. What names did you give the entities?

13 A. One entity was Thunder Valley Engineering and the other was
14 Seymour Capital.

15 Q. In whose names did you create those entities?

16 A. Thunder Valley Engineering was created in the name of John
17 Greenwood and Seymour Capital was created in my name.

18 Q. Who was John Greenwood?

19 A. That was an individual whose identity was given to me by
20 Gary Hirst.

21 Q. Did you ever meet John Greenwood?

22 A. No.

23 Q. What, if anything, did Hirst tell you about Greenwood?

24 A. He told me it was a U.K. citizen living in Malta, who had
25 no aspirations to ever come to the U.S.

I6CJGAL5

Martin - direct

1 Q. Why couldn't the entities be created in Galanis' or Hirst's
2 name?

3 A. They didn't want to hold these specific shares in their
4 names.

5 Q. Why couldn't they both be created in your name?

6 A. Because it would be too many shares in just one
7 individual's name.

8 Q. Who chose the name Thunder Valley Engineer and Seymour
9 Capital?

10 A. Thunder Valley Engineer was chosen by Gary Hirst, and
11 Seymour Capital I chose.

12 Q. After you created the entities, what did you do with the
13 entities?

14 A. I created several brokerage accounts.

15 Q. At whose direction?

16 A. That was mainly Gary Hirst and to lesser extent Jason
17 Galanis.

18 Q. Where did you open brokerage accounts?

19 A. At Pershing, at Burnham Securities, Interactive Brokers and
20 Ameritrade.

21 Q. What made you choose those specific places?

22 A. I knew -- well, I had done business before with Pershing,
23 Ameritrade and Interactive Brokers, and Burnham was suggested
24 to me by Gary Hirst.

25 (Continued on next page)

I6C7GAL6

Martin Fernandez - Direct

1 MS. MERMELSTEIN: Let me offer pursuant to agreement
2 of the parties Government's Exhibits 786 to 788 and 789 to 791.

3 THE COURT: They're admitted.

4 MS. MERMELSTEIN: Thank you, your Honor.

5 (Government Exhibits 786-788 and 789-791 received in
6 evidence)

7 Q. Let me direct your attention, Mr. Martin, to the exhibits
8 that I've just described in the binder in front of you.

9 And, Mr. Wissman, if we can pull up 786 and 789, side
10 by side.

11 Are these account statements for the Seymour Capital
12 and Thunder Valley Engineering accounts at Burnham Securities?

13 A. Yes.

14 Q. And if we can zoom in on the address information under each
15 of them. Whose name and address are these accounts in?

16 A. It's attention Francisco Fernandez, 23371 Mullholland
17 Driver, Suite 186, Woodland Hills, California 91364.

18 Q. Whose address is that?

19 A. That's a PO box that I had created.

20 Q. And is that the same address that's on the Seymour Capital
21 account?

22 A. Yes.

23 Q. We can take those down. Thank you, Mr. Wissman.

24 Who was formally the beneficial owner of the Seymour
25 Capital accounts?

I6C7GAL6

Martin Fernandez - Direct

1 A. Can you specify?

2 Q. Sure. An account when it's opened has to have a beneficial
3 owner, right? Who was the beneficial owner of the Seymour
4 Capital accounts?

5 A. That was me.

6 Q. And what about the Thunder Valley accounts?

7 A. It was John Greenwood.

8 Q. Did John Greenwood have any role in actually accessing,
9 reviewing, doing anything with the account?

10 A. No.

11 Q. And who actually was controlling these accounts?

12 A. That was both Jason Galanis and Gary Hirst.

13 Q. Did the statements for these various accounts come to you?

14 A. Yes.

15 Q. Did you have online access to the accounts?

16 A. Yes.

17 Q. Did anyone else have online access?

18 A. Yes.

19 Q. Who?

20 A. Jason Galanis and Gary Hirst.

21 Q. And how do you know that?

22 A. I gave them the log-in information.

23 Q. Could they make trades in the account using the log-in
24 information?

25 A. Yes.

I6C7GAL6

Martin Fernandez - Direct

1 Q. Could they signed wires?

2 A. No.

3 Q. Now, other than for Thunder Valley and Seymour Capital, did
4 Jason Galanis ask you to open any other accounts for entities
5 that were connected to him?

6 A. Yes.

7 Q. And what was that?

8 A. That was for Thorsdale.

9 Q. Did you fill out paperwork to open various accounts for
10 Thorsdale?

11 A. Yes.

12 Q. How did you list yourself in opening those accounts?

13 A. As the managing director.

14 Q. Were you the managing director of Thorsdale?

15 A. No.

16 Q. Why did you say that?

17 A. Jason Galanis wanted me to open those accounts not
18 necessarily in his name, so he suggested I use my name and that
19 title.

20 Q. Now you said earlier that the purpose of opening the
21 Thunder Valley and Seymour Capital accounts was to hold Code
22 Rebel shares. Did there come a time that they in fact held
23 Code Rebel shares?

24 A. Yes.

25 Q. So let's go to Government 787 in evidence and go to page

I6C7GAL6

Martin Fernandez - Direct

1 18, please, which has the stamp 280944 at the bottom. Can we
2 zoom in on investment activity at the bottom.

3 What is the trade date of that transaction?

4 A. It's May 18, 2015.

5 Q. And under transaction what does it say?

6 A. Investment activity.

7 Q. Sorry. Under -- next to date where it says transaction, if
8 you go to the right, what does it say underneath that?

9 A. Bought.

10 Q. And what is being bought?

11 A. Code Rebel.

12 Q. And if you look at the total debit amount at the end of
13 that line, what is the purchase price of Code Rebel, of the
14 total shares of Code Rebel?

15 A. 2.5 million.

16 Q. Then let's go to Government Exhibit 790 please -- this is
17 the Seymour Capital account -- and let's go to page 16 Bates
18 stamp ending in 189626.

19 And if you can look at that same section of the
20 statement, again what is the trade date there?

21 A. May 18, 2015.

22 Q. So same date as the transaction we just looked at?

23 A. Yes.

24 Q. And again what is being purchased?

25 A. Code Rebel.

I6C7GAL6

Martin Fernandez - Direct

1 Q. And what is the total purchase price of the Code Rebel?

2 A. 1,835,000.

3 Q. Do you specifically recall placing these trades?

4 A. No.

5 Q. Who else could have done it?

6 A. Gary Hirst.

7 Q. Now, separately from the Code Rebel shares --

8 We can take that down. Thank you, Mr. Wissman.

9 Separately from the Code Rebel shares in the Seymour
10 Capital and Thunder Valley accounts, did any other entity with
11 which you were affiliated receive Code Rebel shares?

12 A. Yes.

13 Q. What entity is that?

14 A. Condor Financial.

15 Q. And what was Condor Financial.

16 A. That was an entity that I set up to receive payments for my
17 services from Jason Galanis.

18 Q. How many shares did Condor Financial receive?

19 A. 50,000.

20 Q. Were they restricted or unrestricted?

21 A. Restricted.

22 Q. What does that mean?

23 A. It means I could not sell those shares for a period of
24 time.

25 Q. Did you pay for those shares?

I6C7GAL6

Martin Fernandez - Direct

1 A. No.

2 Q. Why were they given to you?

3 A. As an additional bonus.

4 Q. And did you ever sell them?

5 A. No.

6 Q. Now, going back to the Code Rebel shares in the Thunder
7 Valley and Seymour Capital accounts, did there come a time that
8 you began to sell those shares?

9 A. Yes.

10 Q. At whose direction?

11 A. At Gary Hirst's direction.

12 Q. And how did you typically receive those directions?

13 A. Through an online app called Wickr.

14 Q. What is Wickr?

15 A. It's a peer-to-peer messaging app that allows you to send
16 messages, and those messages autodestruct after a certain
17 period of time.

18 Q. Other than Gary Hirst, did you communicate with anyone else
19 by Wickr?

20 A. Yes.

21 Q. Who else?

22 A. That was Hugh Dunkerley, Gary Hirst, Jason Galanis, and
23 then a couple of the brokers at Pershing and Burnham.

24 Q. What did you do with the money that you got when you sold
25 the Code Rebel shares from the Thunder Valley and Seymour

I6C7GAL6

Martin Fernandez - Direct

1 Capital accounts?

2 A. I was receiving mostly wire instructions from Jason
3 Galanis.

4 Q. And generally speaking, where were you wiring the money?

5 A. Different places. Attorneys, escrow, to buy a home, and
6 also to Thorsdale.

7 Q. Did you have to give an explanation to the bank of the
8 purpose of wires when you sent wires?

9 A. Yes.

10 Q. What did you write?

11 A. At the beginning I was given those instructions by Jason,
12 and then I proceeded in actually putting myself the reason.

13 Q. And were those explanations generally true?

14 A. To the most part, no.

15 Q. Did there come a time that you were directed to wire money
16 to Wealth Assurance?

17 A. Yes.

18 Q. How much, do you remember?

19 A. Around \$100,000.

20 Q. Sorry. You know what, let me withdraw that question.

21 Do you remember anything more specific about which
22 Wealth Assurance entity you wired money to?

23 A. No.

24 Q. What if anything did Jason Galanis tell you was the purpose
25 of those wires?

I6C7GAL6

Martin Fernandez - Direct

1 A. To pay interest.

2 Q. On what?

3 A. On the tribal bond issue.

4 Q. What if anything did Jason Galanis tell you about other
5 sources of money that were being used to pay interest on the
6 tribal bonds?

7 A. He told me that several -- for example, Devon Archer made a
8 payment as well.

9 Q. Did you ever wire money to Rosemont Seneca Bohai?

10 A. Yes.

11 Q. Whose entity is that?

12 A. My understanding is that it was Devon Archer's entity.

13 Q. And approximately how much money did you wire?

14 A. Around 100,000.

15 Q. Just so we're clear, it was 100,000 to RSB, not to Wealth
16 Assurance?

17 A. Correct.

18 Q. Who directed you to wire money to RSB?

19 A. Jason Galanis.

20 Q. And what if anything did he say about the purpose of the
21 wire?

22 A. As I recall, it was a repayment for the payment that Devon
23 Archer had made.

24 Q. Interest on the bonds.

25 A. Correct.

I6C7GAL6

Martin Fernandez - Direct

1 Q. What did you put -- if you remember -- as for the reason
2 for the wire or wires to RSB when you made that payment?

3 A. I believe I put purchase of municipal bonds.

4 Q. Was it in fact for the purchase of municipal bonds?

5 A. No.

6 Q. Why did you put that?

7 A. Because it would have looked weird to put to pay interest
8 on a municipal bond.

9 Q. Are you familiar with an individual named Bevan Cooney?

10 A. Yes.

11 Q. Did you discuss him with Jason Galanis?

12 A. Yes.

13 Q. And what did Jason Galanis tell you about Bevan Cooney?

14 A. That they were childhood friends.

15 Q. And did they have an ongoing relationship?

16 A. Yes.

17 Q. What did Jason Galanis tell you about their present-day
18 relationship?

19 A. He said they were from time to time doing business
20 together.

21 Q. Were they close?

22 A. It was my understanding that they were.

23 Q. Did you ever meet Bevan Cooney?

24 A. Yes.

25 Q. Would you recognize him if you saw him again?

I6C7GAL6

Martin Fernandez - Direct

1 A. Yes.

2 Q. Let me ask you to look around the courtroom and see if you
3 see him. And if you do, point him out to the jury and identify
4 an item of clothing he is wearing.

5 A. The gentleman over there with a gray suit.

6 Q. I think you're going to have to be more specific than the
7 gentleman with the gray suit.

8 A. Gray suit and a gold tie.

9 MS. MERMELSTEIN: I'll ask the record to reflect that
10 the witness has identified Mr. Cooney.

11 THE COURT: It will so reflect.

12 Q. Did you ever attend a celebratory lunch with Mr. Cooney?

13 A. Yes.

14 Q. Who else was at that lunch?

15 A. I believe Jason Galanis was at the lunch, Hugh Dunkerley,
16 and then a couple of other individuals.

17 Q. And where did that lunch take place?

18 A. In Beverly Hills.

19 Q. What was being celebrated?

20 A. The bond issue.

21 Q. Have you ever met an individual named John Galanis?

22 A. Yes.

23 Q. Who is that?

24 A. That's Jason Galanis' father.

25 Q. And what if anything did Jason Galanis tell but whether or

I6C7GAL6

Martin Fernandez - Direct

1 not Jason had ongoing business dealings with his father?

2 A. He just mentioned that from time to time he would help him
3 with his business affairs.

4 Q. Did you have any understanding of whether John Galanis had
5 any role in the Wakpamni bonds?

6 A. No.

7 Q. Did you ever meet any other family members of Jason
8 Galanis?

9 A. Yes.

10 Q. Who are they?

11 A. Jason Galanis' wife and father-in-law.

12 Q. And what were their names?

13 A. Ralph Berger and Monet Berger.

14 Q. I assume Monet is the wife and Ralph is the father-in-law?

15 A. Correct.

16 Q. Let me turn your attention to an individual named Michelle
17 Morton. Did you ever meet Michelle Morton in person?

18 A. No.

19 Q. Did there come a time that you became aware of Michelle
20 Morton?

21 A. Yes.

22 Q. How did you first hear of her?

23 A. Jason Galanis mentioned that he was in the process of
24 purchasing a minority owned investment manager owned by
25 Michelle Martin.

I6C7GAL6

Martin Fernandez - Direct

1 Q. What did Jason Galanis tell you about the purchase of that
2 purchase?

3 A. He told me that the purpose was for that investment manager
4 to buy some of the bond issue.

5 Q. Did you understand that Jason Galanis was purchasing an
6 investment advisor who would buy the bonds at the time that you
7 signed the Private Equity Management agreement?

8 A. No.

9 Q. Having learned that, what did you understand about whether
10 it was proper for Jason Galanis to be controlling the
11 transaction -- controlling the annuity provider and investor
12 and placement agent and exercising control over the investment
13 advisor who bought the bonds?

14 MR. SCHWARTZ: Object to the form.

15 THE COURT: Rephrase, please.

16 Q. What was your understanding about the propriety of Jason
17 Galanis' multiple roles in the bond issuance?

18 MS. NOTARI: Objection.

19 THE COURT: That I will allow.

20 Q. You can answer the question.

21 A. What it was, it was a conflict of interest.

22 Q. So not proper?

23 A. Not proper.

24 Q. And then let me finally turn your attention to Hugh
25 Dunkerley. Are you familiar with him, I gather?

I6C7GAL6

Martin Fernandez - Direct

1 A. Yes.

2 Q. How is that?

3 A. He was introduced to me by Jason Galanis.

4 Q. What was Hugh Dunkerley's involvement with Jason Galanis?

5 A. The way I understood it was that he was sort of the front
6 man for some of the transactions that he was making.

7 Q. Are you familiar with something called Fondinvest?

8 A. Yes.

9 Q. What is that?

10 A. It's a French private equity company.

11 Q. What involvement did you have with Fondinvest?

12 A. I was asked to join the advisory board of Fondinvest.

13 Q. By who?

14 A. By Jason Galanis.

15 Q. What was Jason Galanis' involvement in Fondinvest?

16 A. He was a major investor into Fondinvest.

17 Q. What was your understanding of how Jason Galanis'
18 investment in Fondinvest was funded?

19 A. My understanding was that it was coming from bond proceeds.

20 Q. And where did you get that understanding from?

21 A. There was no other income that was generated from Jason
22 Galanis' businesses.

23 Q. I want to turn your attention to August of 2015. Are you
24 familiar with an entity called Bonwick?

25 A. Yes.

I6C7GAL6

Martin Fernandez - Direct

1 Q. What was Bonwick?

2 A. It was another minority owned investment management
3 company.

4 Q. What if any involvement did Jason Galanis have with
5 Bonwick?

6 A. My understanding is that he had an investment into that
7 company as well.

8 Q. Did there come a time that you were involved in
9 transferring Code Rebel shares to Bonwick?

10 A. Yes.

11 Q. At whose direction?

12 A. Jason Galanis.

13 Q. And why did you do that?

14 A. I was told that the reason was that they needed a minimum
15 capital requirement set by the SEC and that those shares would
16 basically contribute to that minimal capital requirement.

17 Q. I want to direct your attention now to September of 2015.
18 What, if anything, happened with respect to Jason Galanis at
19 that time?

20 A. I believe that's when he was arrested.

21 Q. How did you learn that Jason Galanis had been arrested?

22 A. I received a phone call from Bevan Cooney.

23 Q. Was it common for you to receive phone calls from Bevan
24 Cooney?

25 A. No, not often.

I6C7GAL6

Martin Fernandez - Direct

1 Q. How many times had you met Bevan Cooney at that point in
2 time?

3 A. A couple times.

4 Q. What did Bevan Cooney tell you?

5 A. He told me that Jason Galanis was arrested but not to
6 worry, it didn't have anything to do with the bond issue.

7 Q. Now, prior to that phone call, did you have any
8 understanding that Bevan Cooney was connected in any fashion to
9 the bond issue?

10 A. I knew that he was somehow involved, but I didn't know the
11 extent of it.

12 Q. And how did you react to that phone call?

13 A. I was shocked and concerned.

14 Q. Why?

15 A. Because I was in the middle of doing all of these illicit
16 transactions together with Jason Galanis, and I thought that
17 was going to come back to me.

18 Q. Did you stop working with Jason Galanis after that?

19 A. No.

20 Q. Why not?

21 A. Because it was at the time my only income source, and I
22 proceeded to just close my eyes.

23 MS. MERMELSTEIN: Your Honor, did you want to give
24 that instruction?

25 THE COURT: Yes.

I6C7GAL6

Martin Fernandez - Direct

1 So, ladies and gentlemen, you've just heard evidence
2 that in September 2015 Jason Galanis was arrested. You need to
3 know that Jason Galanis' arrest in September 2015 was for
4 unrelated conduct and had nothing to do with this case.

5 I further instruct you that Mr. Cooney was not a
6 subject of that investigation, and there is no evidence that he
7 knew about Jason Galanis' conduct in that unrelated case until
8 after Jason Galanis was arrested.

9 Should we take a break now?

10 MS. MERMELSTEIN: Sure, your Honor.

11 THE COURT: All right. So we will take our afternoon
12 break now. Please remember, keep an open mind and don't
13 discuss the case.

14 (Jury not present)

15 THE COURT: You can step down and come back in ten
16 minutes. Thank you.

17 Is there anything we need to discuss? No? All right.
18 Thanks. I will see you in ten minutes.

19 (Recess)

20 (Continued on next page)

I6C7GAL6

Martin Fernandez - Direct

1 (Jury present)

2 THE COURT: Everyone can be seated. Thank you.

3 MS. MERMELSTEIN: May I proceed?

4 THE COURT: Yes, of course.

5 FRANCISCO JOSE MARTIN FERNANDEZ, resumed.

6 DIRECT EXAMINATION (Continued)

7 BY MS. MERMELSTEIN:

8 Q. Mr. Martin, did there come a time that Jason Galanis asked
9 you to buy any Wakpamni bonds?

10 A. Yes.

11 Q. And just so we're clear for the record, throughout your
12 testimony here today when you've referred to bonds are you
13 referring to the Wakpamni bonds?

14 A. Yes.

15 Q. What did Jason Galanis tell you was the purpose of asking
16 you to buy Wakpamni bonds?

17 A. He told me to buy the bonds so that they would not go
18 stale.

19 Q. What did you understand him to mean by not go stale?

20 A. When a bond doesn't get traded for a period of time, it
21 becomes a zero balance on the statements of the owners.

22 Q. Did you understand it to be proper to buy a bond for the
23 purpose of having it appear that it was trading?

24 MR. TOUGER: Objection.

25 THE COURT: Overruled.

I6C7GAL6

Martin Fernandez - Direct

1 You can answer that.

2 A. It's not proper.

3 Q. Now, did you agree to buy the bonds as Jason Galanis
4 requested?

5 A. Yes.

6 Q. And did you buy them sort of in your own name or through
7 any entity?

8 A. Through an entity.

9 Q. What entity was that?

10 A. Condor Financial.

11 Q. How much money worth of bonds did you buy?

12 A. 100,000.

13 Q. Who did you buy them from?

14 A. Bonwick.

15 Q. Did you actually pay for the bonds?

16 A. No.

17 Q. Where did the money come from to pay for the bonds?

18 A. From Code Rebel proceeds.

19 Q. And where are those bonds now?

20 A. I don't know.

21 Q. Now, following Jason Galanis' arrest in September of 2015,
22 did you begin to communicate with him through any other means?

23 A. Yes.

24 Q. And what means are those?

25 A. There was a new e-mail address.

I6C7GAL6

Martin Fernandez - Direct

1 Q. What e-mail address was that?

2 A. Legal@colarisventures.com.

3 Q. Who created that e-mail address?

4 A. I did.

5 Q. And who used that e-mail address?

6 A. Jason Galanis.

7 Q. Did you also have a Colaris Ventures e-mail account?

8 A. Yes, I did.

9 Q. What was the purpose of creating those new e-mail accounts?

10 A. Jason wanted to have an untainted e-mail address.

11 Q. What does untainted mean?

12 A. One that was not necessarily being subpoenaed or followed
13 by an agency.

14 Q. Are you familiar with an entity called Calvert Capital?

15 A. Yes.

16 Q. What is that?

17 A. It's an entity I formed.

18 Q. Why did you form it?

19 A. I was asked by Jason to form an offshore company.

20 Q. Who chose the name Calvert Capital?

21 A. I did.

22 Q. Where did you get the name from?

23 A. At the time I was living on Kitridge Street in Woodland
24 Hills, and my cross street was Calvert.

25 Q. Prior to creating the Calvert Capital entity, had you ever

I6C7GAL6

Martin Fernandez - Direct

1 had any discussions with Galanis about what you would name it?

2 A. No.

3 Q. And approximately when did you create it?

4 A. That was around October 2015.

5 Q. What did Jason Galanis say was the purpose of creating the
6 entity?

7 A. He wanted the new entity to hold his Wealth Assurance
8 stock.

9 Q. Let me direct your attention to Government Exhibit 1609,
10 just for the court, the witness and the parties, please.

11 Do you recognize that?

12 A. Yes.

13 Q. What is it?

14 A. That's an incorporation document for Calvert Capital.

15 Q. That's the incorporation document for the entity you
16 created?

17 A. Yes.

18 MS. MERMELSTEIN: The government offers Government
19 Exhibit 1609.

20 MR. TOUGER: No objection.

21 MR. SCHWARTZ: No objection.

22 THE COURT: It will be admitted.

23 (Government Exhibit 1609 received in evidence)

24 Q. And if we publish that to the jury.

25 And what is the date of the incorporation?

I6C7GAL6

Martin Fernandez - Direct

1 A. October 1, 2015.

2 Q. Did you open the Calvert document in your own name or in
3 someone else's name?

4 A. Someone else's name.

5 Q. Why?

6 A. Because I had already too much exposure. I didn't want to
7 be on another set of corporations.

8 Q. Whose name did you use?

9 A. My brother.

10 Q. What is your brother's name?

11 A. Salvador Martin Fernandez.

12 Q. Where does he live?

13 A. In Spain.

14 Q. And did he know that you were using his name to open this
15 entity?

16 A. Yes.

17 Q. Now, did you provide any Calvert documents in response to
18 an SEC subpoena?

19 A. Yes.

20 Q. Let me direct your attention in the binder to Government's
21 Exhibits 1610, 1611 and 1612, and let me ask you to open the
22 binder in front of you and take a look at those. Are those
23 documents -- and then I will ask you are those documents that
24 you provided to the SEC?

25 A. Yes for 1610. Yes for 1611. And yes for 1612.

I6C7GAL6

Martin Fernandez - Direct

1 MS. MERMELSTEIN: The government offers Government's
2 Exhibits 1610 through 1612.

3 THE COURT: Any objection?

4 MR. TOUGER: No objection.

5 MR. SCHWARTZ: No objection, but, your Honor, I think
6 this would be an appropriate time for the limiting instruction
7 about the use of these documents.

8 THE COURT: All right.

9 (Government Exhibits 1610 through 1612 received in
10 evidence)

11 MR. SCHWARTZ: That they were documents that were
12 created.

13 THE COURT: OK.

14 All right. So, ladies and gentlemen, these documents
15 are not being admitted for the truth of what is contained in
16 them but for the fact that they were created. Thank you.

17 MS. MERMELSTEIN: Thank you, your Honor.

18 Q. Let's start with Government Exhibit 1611, please. Do you
19 recognize that document?

20 A. Yes.

21 Q. What is it?

22 A. It's the operating agreement for Calvert Capital Ltd?

23 Q. And if we go to the last page, whose name is signed to that
24 document?

25 A. Salvador Martin Fernandez.

I6C7GAL6

Martin Fernandez - Direct

1 Q. Did he actually sign this document?

2 A. No.

3 Q. Who put his name on it?

4 A. I did.

5 Q. And if we can go to 1612, please. These three documents
6 we're looking at, these are not all of the documents that you
7 produced to the SEC, right?

8 A. Correct.

9 Q. So let me direct your attention to the e-mail at the bottom
10 of this page from legal@colarisventures, subject:
11 Attorney/client communication to steve@horowitzrubenstein.com.
12 And again, who is legal@colarisventures.com?

13 A. That would be Jason Galanis.

14 Q. And who is steve@horowitzrubenstein?

15 A. That was one of his attorneys.

16 Q. Let me ask you to read this e-mail.

17 A. "Calvert Capital Partners, a non U.S. partnership, is party
18 to the attached August 2014 convertible note.

19 "Thorsdale was appointed North American agent for
20 Calvert and administered the note until its mandatory
21 conversion in September 2015, pursuant to its terms.

22 "Calvert Capital, a UK company into which the
23 partnership was reorganized" -- sorry -- "in which the
24 partnership reorganized, was formed in October 2015.

25 "The WAPC annuity has a priority claim on the assets

I6C7GAL6

Martin Fernandez - Direct

1 of Calvert. The assets consist of the WAH shares and warrants.

2 "A valuation of the annuity assets should be completed
3 for good order. The foundational documents would be:

4 (i) Deloitte valuation of Valorlife and Wealth
5 Assurance (sent).

6 (ii) 2014 audit of Valor Group by PwC ... which also
7 reflects value of subsidiaries (sent).

8 (iii) market price of the WAH public stock - level 1
9 observation.

10 Q. Just so we're clear, the Calvert Capital you created was
11 not a reorganized partnership of a preexisting Calvert, right?

12 A. No.

13 Q. Calvert in 2014 had no assets, right?

14 A. Correct.

15 Q. Because there was no Calvert, right?

16 A. No.

17 Q. And if we can look up at the top of this e-mail from legal
18 to you, francisco@colarisventures.com, did you receive a
19 forward of this e-mail?

20 A. Yes.

21 Q. And if we can go to the attachment, please. Who are the
22 parties to this convertible promissory note, according to what
23 is written here?

24 A. That's Wealth Assurance Holdings Ltd. and Calvert Capital
25 Partners.

I6C7GAL6

Martin Fernandez - Direct

1 Q. And what is the date of this agreement?

2 A. August 28, 2014.

3 Q. This agreement did not exist on August 28, 2014, right?

4 A. No.

5 Q. And let me direct your attention now to Government Exhibit
6 1610. This is that same agreement we were just looking at; is
7 that right?

8 A. Correct.

9 Q. And if we go to the end of this agreement -- I'm not sure
10 it's actually the last page, so let's scroll to the back and
11 then scroll up. So this is a partially signed version of the
12 agreement; is that right?

13 A. Correct.

14 Q. Now, you mentioned earlier this afternoon that you got a
15 total of \$150,000 from Thorsdale in connection with signing the
16 Private Equity Management agreement and the first bond
17 issuance. Did you receive additional money from Jason Galanis
18 after that?

19 A. Yes.

20 Q. Approximately how much in total?

21 A. Between 250 and \$300,000.

22 Q. Did there come a time that you were approached by the
23 F.B.I.?

24 A. Yes.

25 Q. Approximately when was that?

I6C7GAL6

Martin Fernandez - Direct

1 A. It was around I would say February 2016.

2 Q. And did there come a time when you spoke with
3 representatives of the United States Attorney's office?

4 A. Yes.

5 Q. Was that shortly thereafter?

6 A. Yes.

7 Q. In those initial meetings with the F.B.I. and with the U.S.
8 Attorney's office, did you tell the government everything that
9 you knew about the Wakpamni bonds and the Code Rebel sales?

10 A. No.

11 Q. Were you completely honest about all of the facts that you
12 relayed?

13 A. No.

14 Q. Why not?

15 A. Because I knew that I was in the midst of legal activities,
16 and I didn't want to taint myself.

17 Q. Did there come a time that you were charged by the SEC in
18 this case?

19 A. Yes.

20 Q. What were you charged with?

21 A. With securities fraud.

22 Q. And have you resolved that matter?

23 A. Yes.

24 Q. What is the nature of that settlement?

25 A. It's no admit/no deny settlement.

I6C7GAL6

Martin Fernandez - Direct

1 Q. What does that mean?

2 A. It means that I'm not denying the fact that I committed the
3 securities fraud but I'm also not admitting it.

4 Q. I gather you are in fact now admitting it.

5 A. Correct.

6 Q. Are you going to have to pay a fine in connection with that
7 settlement?

8 A. Yes.

9 Q. And has the amount been determined?

10 A. No.

11 Q. Now, at the time that you were charged by the SEC where
12 were you living?

13 A. In Spain.

14 Q. So at some point you left California?

15 A. Correct.

16 Q. Why was that?

17 A. My business activities here in the states were not anymore
18 possible because of the SEC situation that I had.

19 Q. Have you fallen behind on your child support payments?

20 A. Yes.

21 Q. Why is that?

22 A. When?

23 Q. Why?

24 A. Because I wasn't making any income at that time.

25 Q. And approximately how much do you owe?

I6C7GAL6

Martin Fernandez - Direct

1 A. Approximately 10,000.

2 Q. What is the status of your U.S. taxes for the last few
3 years?

4 A. I still have to file the 2015 taxes, which I'm in the midst
5 of actually doing by next month.

6 Q. Now, both before and after being charged by the SEC and
7 resolving that matter, did you continue to meet with
8 representatives of the U.S. Attorney's office and law
9 enforcement?

10 A. Yes.

11 Q. You did that even after leaving the United States?

12 A. Correct.

13 Q. Did you do that voluntarily?

14 A. Yes.

15 Q. Were you compelled to do it in any way?

16 A. No.

17 Q. Were the statements you made in those interviews protected
18 by a proffer agreement?

19 A. Yes.

20 Q. What does that mean?

21 A. It means that anything I say during the proffer session
22 cannot be used against me directly.

23 Q. At the time that the U.S. Attorney's office sought your
24 testimony in this case, where were you living?

25 A. In Spain.

I6C7GAL6

Martin - Cross

1 Q. What is your understanding of whether you could have been
2 compelled to come to the United States to testify in this
3 trial?

4 A. I understand that I could have not been compelled.

5 Q. And so you're here voluntarily?

6 A. Yes.

7 MS. MERMELSTEIN: Nothing further, your Honor.

8 THE COURT: All right. Cross-examination.

9 CROSS EXAMINATION

10 BY MS. NOTARI:

11 Q. Good afternoon, Mr. Martin.

12 A. Good afternoon.

13 Q. My name is Paula Notari. Myself and Abraham Hassen who is
14 seated to the right of Mr. Cooney are his lawyers. We have
15 never before, correct?

16 A. Correct.

17 Q. We've never spoken?

18 A. No.

19 Q. As far as you know, I've never contacted your lawyer,
20 correct?

21 A. Correct.

22 Q. Now, you were introduced to Jason Galanis approximately 15
23 to 16 years ago, correct?

24 A. About, yes.

25 Q. And you met Jason through your exwife Julie Waldorf?

I6C7GAL6

Martin - Cross

1 A. Correct.

2 Q. And your wife -- your exwife Julie Waldorf and Jason
3 Galanis' wife Monet Berger were close friends, correct?

4 A. Correct.

5 Q. And for many years you were social friends with Jason
6 Galanis before you conducted business with him, correct?

7 A. Correct.

8 Q. You conducted -- you talked about your business, but you
9 didn't actually do business together.

10 A. Correct.

11 Q. And you attended Jason Galanis' wedding?

12 A. Yes.

13 Q. And there were a lot of close family friends and relatives
14 there?

15 A. Yes.

16 Q. Mr. Bevan Cooney was not at that wedding, correct?

17 A. I don't remember.

18 Q. You don't remember. Well, you testified that the first
19 time you met him was approximately two years ago.

20 A. Correct.

21 Q. So your first memory of meeting him was about two years
22 ago.

23 A. Correct.

24 Q. OK. And you said that at the time in August, around summer
25 of 2014, Jason Galanis contacted you, and you were living in

I6C7GAL6

Martin - Cross

1 Italy.

2 A. Can you repeat the date.

3 Q. Around August of 2014 he contacted you?

4 A. No, it was before that.

5 Q. And at the time -- do you remember the date when he
6 contacted you?

7 A. It was on or about May -- April, May of 2014.

8 Q. And did you have -- did you have repeated -- did you talk
9 to him on a frequent basis?

10 A. Yes.

11 Q. How often did you speak to him?

12 A. I couldn't tell you exactly.

13 Q. Was it every month, or every other month, or every year?

14 A. You could say it would be weekly.

15 Q. So was that weekly for the 15 to 16 years you knew him?

16 A. I don't understand the question.

17 Q. I said you spoke to him -- you said that you knew him for
18 about 15 or 16 years, correct?

19 A. Correct.

20 Q. Did you speak to him weekly during that 15 to 16 year
21 relationship?

22 A. No.

23 Q. When did you start talking to him weekly?

24 A. On or about when we talked about the bond issue.

25 Q. And that was in April or May of 2014?

I6C7GAL6

Martin - Cross

1 A. Correct.

2 Q. And he contacted you, and at that time you were living in
3 Italy.

4 A. That's correct.

5 Q. And he knew that you were having difficult financial times.

6 A. Yes.

7 Q. He knew that you had been fired from your employment at
8 UBS, correct?

9 A. I'm not sure if I told him that.

10 Q. OK. And you were fired in 2011?

11 A. Around that time.

12 Q. And so you had been out of work for about three years.

13 A. Correct.

14 Q. And you had gone through a difficult divorce, correct?

15 A. Correct.

16 Q. You have three children?

17 A. Correct.

18 Q. At that time and now.

19 A. Correct.

20 Q. And you were behind on your child support payments.

21 A. That's right.

22 Q. So he knew that you were in need of some work.

23 A. Yes.

24 Q. And he contacted you while you were in Italy, and he asked
25 you if you were interested in working for him.

I6C7GAL6

Martin - Cross

1 A. That's correct.

2 Q. And he told you that -- and at that time he appeared to be
3 financially successful, correct?

4 A. That's correct.

5 Q. At that time had you ever visited his home at 1920 Bel Air?

6 A. Yes.

7 Q. And so you knew that he had a multi-million dollar home,
8 correct?

9 A. Yes.

10 Q. And at that time had you met his partner Jason Sugarman?

11 A. I met him after I came back to the U.S.

12 Q. OK. And you knew that Jason Sugarman's father-in-law was
13 Peter Gruber who was a billionaire?

14 MS. MERMELSTEIN: Objection.

15 THE COURT: Overruled.

16 You can answer that.

17 A. Yes.

18 Q. And it's fair to say that you saw this as a good
19 opportunity because Mr. Jason Galanis appeared to be
20 successful.

21 A. Yes.

22 Q. Now, when Jason first began to talk to you about the
23 Wakpamni bonds -- we have been referring to them -- have you
24 ever heard the expression WLCC bonds?

25 A. No.

I6C7GAL6

Martin - Cross

1 Q. OK. So I may use that terminology, WLCC bond, but that
2 refers to the Wakpamni tribal bonds.

3 A. OK.

4 Q. And Jason explained to you that he wanted you to be the
5 investment manager for the tribal -- for the WLCC bonds.

6 A. Part of it, yes.

7 Q. And at some point he said to you that he needed someone
8 unaffiliated with him to serve as the investment manager of the
9 bond issuance.

10 A. Correct.

11 Q. And what did you understand that term "unaffiliated" to
12 mean?

13 A. My understanding was that the investment manager could not
14 be affiliated with any of the other participants of the
15 municipal bond issue.

16 Q. And you agreed with that.

17 A. Yes.

18 Q. You would essentially be a neutral or independent person
19 investing the bonds.

20 A. That was the idea.

21 Q. OK. And he asked you to do this position, and it's fair to
22 say that you had prior experience fulfilling this type of role.

23 A. Correct.

24 Q. And you came to some terms as far as what your payments
25 would be.

I6C7GAL6

Martin - Cross

1 A. Yes.

2 Q. You agreed that you would initially be paid \$75,000 for the
3 first tranche, correct?

4 A. Correct.

5 Q. And that at some point there would be a second tranche, and
6 you would get paid another \$75,000?

7 A. No, that's not correct, not for the second tranche.

8 Q. So what was the -- what were the financial terms of the
9 agreement?

10 A. The terms were that I was going to be paid when I signed
11 the investment management agreement \$75,000 and then an
12 additional \$75,000 right after the first tranche was
13 successfully placed.

14 Q. And at some point you signed an investment manager
15 agreement?

16 A. That's correct.

17 Q. And you signed that agreement on August 26, 2014?

18 A. It was earlier than that.

19 Q. OK. And at that time you signed the agreement, the
20 documents were sent to you in Italy?

21 A. Correct.

22 Q. But at some point you later moved back to California to
23 fulfill this role, correct -- to work with Jason Galanis.

24 A. Correct.

25 Q. Now, Jason told you -- he gave you certain documents, and

I6C7GAL6

Martin - Cross

1 he asked you to sign them, and you signed them, correct?

2 A. Correct.

3 Q. And it's fair to say that at the time that you agreed to
4 this role you trusted Jason Galanis.

5 A. Trusted would be far fetched.

6 Q. OK. Well, you told the government when you met with them
7 that you trusted him.

8 A. I don't remember saying that, but --

9 Q. Well, perhaps we can refresh your recollection.

10 A. Sure.

11 Q. Could we bring up 3522-1, page 3.

12 If you skip down -- perhaps I'm asking you to refresh
13 your recollection -- if you go down from the first paragraph to
14 the sixth line, the sentence starting "Martin agreed ..."

15 A. Yes.

16 Q. Do you see that sentence?

17 A. Yes.

18 Q. And it says there that you told the government --

19 MS. MERMELSTEIN: Whoa, whoa. Objection to the
20 reading from the document.

21 THE COURT: Yes, let's not read from the document.

22 Q. Now, this was the first time you met with the government.
23 You spoke to them. This was your first meeting?

24 A. With the F.B.I.?

25 MS. MERMELSTEIN: Your Honor, the witness has no way

I6C7GAL6

Martin - Cross

1 of knowing whether or not a page that is being shown is from a
2 particular thing, so I think the question is just if this
3 refreshes his recollection.

4 THE COURT: Do you want to see if it refreshes his
5 recollection?

6 Q. Does that refresh your recollection?

7 A. No.

8 Q. It doesn't refresh your recollection.

9 A. No, it doesn't.

10 Q. You don't remember telling the government that when you
11 first agreed to be the investment manager that you trusted
12 Jason Galanis.

13 A. I don't.

14 Q. Was this -- you said that early on in your meetings with
15 the government you were lying to them. Was this one of those
16 times?

17 A. I don't know.

18 Q. Now, early on when you first agreed to be the investment
19 manager you were acting under the belief that the proceeds of
20 the bond needed to be managed, correct?

21 A. Correct.

22 (Continued on next page)

23

24

25

I6CJGAL7

Martin - cross

1 Q. And you believe that you would, in fact, get to manage the
2 proceeds of the bond?

3 A. That's correct.

4 Q. And it was your plan to invest the proceeds of the bond in
5 marketable securities?

6 A. That was the idea.

7 Q. And after you signed the bonds, there was a period of time
8 where you did not receive access to the funds, correct?

9 A. Correct.

10 Q. Now, at this time you had never spoken to anyone from the
11 WLCC?

12 A. No.

13 Q. And you were only speaking to Jason Galanis?

14 A. No.

15 Q. Well, you were receiving instructions from Jason Galanis?

16 A. Correct.

17 Q. And you periodically -- now, at this point when exactly did
18 you move to California?

19 A. It was around July of 2016. Sorry. July of 2015. Sorry.

20 Q. Now, after the time period where you weren't receiving the
21 funds, there came a time when you asked Jason for an update as
22 to when you would receive the funds that you could invest?

23 A. Correct.

24 Q. And Jason told you not to worry, that you would get the
25 assets to manage the funds?

I6CJGAL7

Martin - cross

1 A. Correct.

2 Q. He assured you of that. He told you to sit tight? Those
3 were his words, correct

4 A. That's correct.

5 Q. And you continued to ask him, and he continued to tell you
6 to be patient, correct?

7 A. Correct.

8 Q. Now, Wealth Assurance private client was listed in the
9 annuity contract as -- withdrawn.

10 Jason told you that the provider for the annuity
11 contract is Wealth Assurance? Did he tell you that?

12 A. Can you repeat that, please.

13 Q. Did Jason tell you that -- I am going to, to avoid
14 confusion in this case because there is more than one Galanis,
15 I will just refer as often as I can to Jason even though
16 perhaps we would normally call him Mr. Galanis, so I'll try to
17 refer to him as Jason to be clear.

18 But Jason told you that the annuity provider was
19 Wealth Assurance?

20 A. Correct.

21 Q. And you did not have any personal dealings with Wealth
22 Assurance?

23 A. No.

24 Q. Actually, there came a time when you learned that it was
25 Wealth Assurance Private Client, correct?

I6CJGAL7

Martin - cross

1 A. I've heard the name, but very faint recollection of that
2 name.

3 Q. You knew that it was a life insurance company based in
4 Lichtenstein?

5 A. I believe so.

6 Q. And you believe it was a publicly-traded company?

7 A. Correct.

8 Q. You did not have any dealings with Wealth Assurance Private
9 Client in terms of your role?

10 A. No.

11 Q. Now, at some point in February of 2016 you were contacted
12 by the United States Government, and you were asked to meet
13 with them?

14 A. Yes, I was contacted by the FBI.

15 Q. At that point you were living in Los Angeles?

16 A. Correct.

17 Q. You made arrangements to meet with them at a Starbucks in
18 Forest Hills, California?

19 A. I met with them at Starbucks in Woodland Hills.

20 Q. At that point did you have a lawyer with you?

21 A. No.

22 Q. During that meeting with the FBI?

23 A. Correct.

24 Q. How many agents were there?

25 A. Two.

I6CJGAL7

Martin - cross

1 Q. Did they record the meeting?

2 A. They took notes, I believe.

3 Q. Was it a casual meeting or was it very formal?

4 A. I don't know what you mean by "casual."

5 Q. Well, you weren't in handcuffs, correct?

6 A. No, I was not.

7 Q. At that meeting you had with the FBI agents, they asked you
8 certain questions about the WLCC bonds, correct?

9 A. Correct.

10 Q. At that meeting were you trying to be truthful, or was that
11 not a truthful day?

12 MS. MERMELSTEIN: Objection to form.

13 THE COURT: Sustained.

14 BY MS. NOTARI:

15 Q. Did you tell them the truth that day?

16 A. Some of it.

17 Q. Some of it? You told them you never met anyone from WLCC
18 or their attorneys, correct?

19 A. Correct.

20 Q. You told them that you did not discuss the bonds with
21 anybody but Jason Galanis, correct?

22 A. I don't remember.

23 Q. Would something refresh your recollection? I should say
24 would it be helpful? If we could go to 3522-2, Page 4.

25 (Pause)

I6CJGAL7

Martin - cross

1 MS. MERMELSTEIN: Your Honor, may we approach for just
2 one moment?

3 THE COURT: Yes, sure.

4 (At sidebar)

5 MS. MERMELSTEIN: Thank you.

6 I don't have any objection to the witness having his
7 recollection refreshed, but I think it is unfair and misleading
8 to say did you tell the government something at a meeting in a
9 Starbucks on this date. I don't remember. Let me refresh your
10 recollection, and show him a 302 that is not a 302 from that
11 interview. 3522-2 is a phone call with the U.S. Attorney's
12 Office, and he is not being shown the whole document.

13 (Multiple voices)

14 MS. MERMELSTEIN: It has to be --

15 THE COURT: It sounds like an accident. She said it
16 was the wrong document. I think we all agree that would be
17 improper, but it was just an accident.

18 (Continued on next page)

19
20
21
22
23
24
25

I6CJGAL7

Martin - cross

1 (In open court)

2 (Off-the-record discussion)

3 BY MS. NOTARI:

4 Q. For clarification, you met with the government several
5 times in this case, correct?

6 A. Yes.

7 Q. And you met with them on February 8th, 2016?

8 A. With the FBI, yes.

9 Q. And you met with them later on March 23rd, 2016?

10 A. Yes.

11 Q. You met with them on April 5th, 2016, or you spoke to them?

12 A. I spoke to them.

13 Q. March 23rd, 2016 and April 5, 2016 you were actually living
14 abroad, correct?

15 A. When was that? Sorry?

16 Q. March 23rd, 2016 and April 5, 2016, you were living abroad?

17 A. No.

18 Q. No?

19 A. No. I was in the U.S.

20 Q. Those meetings were telephonic?

21 A. They were video conferences.

22 Q. So let's get back to the question that I asked you, was
23 that you never discussed the bonds with anyone but Jason
24 Galanis?

25 A. Is that question related to what I said?

I6CJGAL7

Martin - cross

1 Q. I asked you that question.

2 A. I don't remember.

3 Q. So I would ask you to refer to what is being marked as
4 3522-2. This is Page 4, and I would direct your attention to
5 the 9th line.

6 A. Okay. What does it start with?

7 Q. Perhaps you can just read that whole section.

8 A. Okay. So Martin was --

9 Q. No. Don't read it. Just read it to yourself.

10 A. Okay. (Pause) Okay.

11 Q. Does that refresh your recollection?

12 A. It doesn't, actually.

13 Q. So you don't remember telling the government that you did
14 not speak to anyone about the bonds except Jason Galanis?

15 A. I don't remember specifically saying that, no.

16 Q. Can you look at the date on that, on the top of that page?

17 A. Yes.

18 Q. Did you meet with the government around March 23rd, 2016?

19 A. Yes.

20 Q. It is fair to say that the events we're talking about date
21 back to 2014, correct?

22 A. The events we are talking about, the WLCC bond date back to
23 2014, 2014, 2015, yes.

24 Q. Now we're in 2018, correct?

25 A. Correct.

I6CJGAL7

Martin - cross

1 Q. It makes sense that your memory was better back in 2014 and
2 2016 than it was today, correct?

3 MS. MERMELSTEIN: Objection.

4 THE COURT: Sustained.

5 BY MS. NOTARI:

6 Q. Would you agree that your memory of the events that
7 happened concerning the bonds were probably better back in 2016
8 than they are today?

9 MS. MERMELSTEIN: Objection.

10 THE COURT: I'll allow that.

11 A. Yes.

12 BY MS. NOTARI:

13 Q. Now, you talked about -- did you have any -- you had no
14 dealings with Atlantic Asset Management, correct?

15 A. Correct.

16 Q. You never spoke to any of the people at Hughes Capital,
17 correct?

18 A. Correct.

19 Q. You said that you talked about Hugh Dunkerley.

20 You learned that Hugh Dunkerley was an executive at
21 Burnham Securities?

22 A. Correct.

23 Q. And your understanding was he was the president of Wealth
24 Assurance?

25 A. I don't remember specifically that he was the president,

I6CJGAL7

Martin - cross

1 but I know he was involved, yes.

2 Q. You did not have specific conversations with Hugh Dunkerley
3 about the bonds, correct?

4 A. When?

5 Q. At any point?

6 A. We had discussions over the bonds.

7 MS. NOTARI: Can you put back 3522, the bottom of the
8 first paragraph. (Pause) No. I am sorry. This is Page 4.

9 (Pause) Can we go back to that paragraph.

10 Q. Again during a meeting March 2016, I direct your attention
11 to what is 3522-2, Page 4, the question is: You did not have
12 specific conversations with Hugh Dunkerley regarding the bonds,
13 correct?

14 A. It depends when it was, specifically when it was. I had
15 discussions with Hugh Dunkerley about the bonds, but --

16 Q. So you don't recall telling the government that you never
17 had specific conversations with Mr. Dunkerley?

18 A. I don't remember, no.

19 Q. So again would you like to --

20 MS. MERMELSTEIN: May we approach again?

21 THE COURT: Sure.

22 (Continued on next page)

23 (At sidebar)

24 MS. MERMELSTEIN: I guess two things. He hasn't said
25 he doesn't remember it. He just said he didn't say that, that

I6CJGAL7

Martin - cross

1 that isn't true. Otherwise, that is not what the 3500 says.
2 The 3500 says he didn't have one-on-one conversations with
3 Dunkerley. It is clear he did talk to Dunkerley, and that
4 makes the question unfair. If you're going to suggest it says
5 something, it should say that.

6 MS. NOTARI: Let me look at that. I think it is the
7 exact question I asked. (Pause) Okay, so he says Martin did
8 not have specific one-on-one conversations with Dunkerley
9 regarding the bonds. Martin and Dunkerley's conversation were
10 all pretty general. Martin never discussed the bonds in detail
11 as his focus was more on --

12 THE COURT: So here he just said he had discussions,
13 but I don't think he clarified that they were specific.

14 MS. NOTARI: I'll move on.

15 THE COURT: Okay.

16 (Continued on next page)
17
18
19
20
21
22
23
24
25

I6CJGAL7

Martin - cross

1 (In open court)

2 BY MS. NOTARI:

3 Q. Mr. Martin, you told the government at a prior occasion
4 that you did not have specific one-on-one conversations with
5 Hugh Dunkerley regarding the bonds?

6 A. Again I don't remember about that specifically.

7 Q. Now, you talked about in late 2015 Jason Galanis was
8 arrested, correct?

9 A. Correct.

10 Q. It's fair to say that when you first started working with
11 Jason Galanis in August of 2014, you did not question what he
12 was telling you, correct?

13 A. Again I think that is farfetched. I didn't blindly trust
14 him, everything he said.

15 Q. You didn't have any concerns?

16 A. About what?

17 Q. You did not have any concerns about what Jason Galanis was
18 telling you about the WLCC bonds?

19 A. It depends when. I had concerns afterwards, not at the
20 very, very beginning.

21 Q. When you first started working with him, did you have any
22 concerns about the bonds?

23 A. I started having concerns around that time, yes.

24 Q. So on a prior occasion you told the government that you did
25 not question what you're being told about the WLCC bonds. Do

I6CJGAL7

Martin - cross

1 you recall telling the government that?

2 A. No.

3 Q. Do you recall telling the government that you never had any
4 concerns about the bonds?

5 A. No.

6 MS. NOTARI: Your Honor, I refer you, if we can pull
7 up 3522-6, Page 4, Paragraph 2.

8 BY MS. NOTARI:

9 Q. Does that refresh your recollection?

10 A. Somewhat.

11 Q. Do you recall now telling the government that you did not
12 question what you were being told to do or had any concerns?

13 A. Again at the beginning I did not have any concerns about
14 the transaction itself.

15 Q. So it says, so you had, you told the government that you
16 became more concerned and had questions after Galanis was
17 arrested. Is that what you told the government?

18 A. I don't remember saying that to the government. It is just
19 what it says here, but I don't remember specifically saying
20 that to the government.

21 Q. During these sessions, the government, the investigators
22 were taking notes, correct?

23 A. I assume they did.

24 Q. And they were writing down your answers?

25 A. I never saw them actually writing down anything.

I6CJGAL7

Martin - cross

1 Q. Did you ever review these reports with the government
2 before today?

3 A. These reports that we're looking at right now, I don't
4 remember, no.

5 Q. So it is now fair to say that what you told the government
6 back in April 2016 was not true?

7 MS. MERMELSTEIN: Objection, your Honor.

8 THE COURT: Sustained.

9 MS. NOTARI: Your Honor, may I?

10 (off-the-record discussion)

11 BY MS. NOTARI:

12 Q. Now, Mr. Martin, when Jason Galanis was arrested, it is
13 fair to say you were extremely worried?

14 A. Yes.

15 Q. You were concerned because you knew that your name was all
16 over the bond documents?

17 A. Yes.

18 Q. Correct? And you met with him at the Montage Hotel in
19 Beverly Hills after he was arrested?

20 A. I recall that, yes.

21 Q. And you told him that you were extremely concerned because
22 your name was all over the bonds, correct?

23 A. That's correct.

24 Q. He assured you that there was no problem --

25 MS. MERMELSTEIN: Objection.

I6CJGAL7

Martin - cross

1 THE COURT: Sustained.

2 BY MS. NOTARI:

3 Q. Now, we've established that you knew Jason Galanis for many
4 years on a social basis, correct?

5 A. Correct.

6 Q. In connection with the investigation in this case, you sat
7 down with the government -- you either sat down with them or
8 you had a telephonic conversation with them how many times? Do
9 you remember?

10 A. I couldn't tell you exactly how many times, but I met
11 several times.

12 Q. I am sorry?

13 A. I cannot tell you exactly how many times, but several
14 times.

15 Q. Several times?

16 So you sat down with them or spoke to them at least 8,
17 probably 8 or 9 times, correct?

18 A. I don't recall that number, that many times.

19 Q. The first time was at the Starbucks, correct, in
20 California?

21 A. Correct.

22 Q. At some point you moved back to Spain?

23 A. Correct.

24 Q. When did you move back to Spain?

25 A. It was around May 2016.

I6CJGAL7

Martin - cross

1 Q. You spoke to them -- do you recall speaking to them in
2 March of 2016?

3 A. Yes.

4 Q. At that point did you get a lawyer?

5 A. Yes.

6 Q. You did? You had a lawyer? Okay.

7 Each time you sat down with them, you understood that
8 it was your role to tell them the truth, correct?

9 A. Correct.

10 Q. And they asked you a lot of details about what happened,
11 and you provided what you considered to be the important
12 details, correct?

13 A. Correct.

14 Q. Now, you mentioned Mr. Bevan Cooney, and you said that
15 Bevan Cooney was a friend of Jason Galanis, correct?

16 A. Correct.

17 Q. And you met him the first time approximately two years ago?

18 A. About.

19 Q. And you said that you met him two or three times?

20 A. About.

21 Q. Early on in this case when you spoke to the agents, you
22 told them you had only spoken to Mr. Cooney or met with him
23 approximately two or three times?

24 A. That can be.

25 Q. In fact, in this case you reviewed a lot of documents with

I6CJGAL7

Martin - cross

1 the government, correct?

2 A. A few documents, yes, I reviewed.

3 Q. We went through a stack of documents today, correct?

4 A. Correct.

5 Q. Your name is on many of those documents?

6 A. Correct.

7 Q. And the government has reviewed email with you, correct?

8 A. Email?

9 Q. Email?

10 A. Specify that. I don't understand the question.

11 Q. Emails regarding the WLCC bond and your work, your role on
12 the WLCC bond?

13 A. Yes.

14 Q. The investment manager agreement?

15 A. Correct.

16 Q. All of the documents you reviewed on direct examination?

17 A. Yes.

18 Q. And none of those had anything to do with Bevan Cooney,
19 correct?

20 A. That's right.

21 Q. Mr. Cooney, you said he was a close childhood friend of
22 Jason Galanis. Is that what you said?

23 A. That's what I said.

24 Q. That is what Jason told you?

25 A. Correct.

I6CJGAL7

Martin - cross

1 Q. In fact, Jason told you a lot of things that we know today
2 are not true, correct?

3 A. True.

4 Q. He lied to you very frequently, correct?

5 A. Yes.

6 Q. And he lied to a lot of different people?

7 MS. MERMELSTEIN: Objection.

8 THE COURT: Sustained.

9 BY MS. NOTARI:

10 Q. Now, at some point he provided reasons for you to do
11 things, correct, very often?

12 A. I don't understand the question.

13 Q. For example, he told you that he wanted you to buy the
14 Wakpamni bond, correct?

15 A. Correct.

16 Q. And he told you that the reason he wanted you to buy the
17 bond was because he didn't want the bond to go stale?

18 A. Correct.

19 Q. Is that true or a lie?

20 A. That's true.

21 Q. You think that was true?

22 A. I think I said that statement is true.

23 Q. You think that statement is true?

24 A. You are confusing me with --

25 Q. No, no, no. Was that a true statement the bond was stale

I6CJGAL7

Martin - cross

1 and that is why he wanted you to buy it?

2 A. I don't understand. What is the question? I don't
3 understand the question.

4 Q. Do you think that the reason he gave you was true or false?

5 A. No. I believe that he really wanted me to buy those bonds
6 because he thought they were going stale, that is a true
7 statement, yes.

8 Q. You thought that was a true statement?

9 You didn't buy the bonds in your own name, correct?

10 A. Correct.

11 Q. You bought them in someone else's name?

12 A. In a corporation, yes.

13 Q. As far as getting back to Jason Galanis, he would often
14 tell you things, but you would later learn that those things
15 were not true?

16 A. Fair to say.

17 Q. Did you know anything about Jason Galanis' background,
18 where he grew up?

19 A. Yes.

20 Q. You knew he grew up in Greenwich, Connecticut?

21 A. I didn't know that one.

22 Q. You didn't know that?

23 A. No.

24 Q. And Mr. Cooney actually grew up in Montana. Did you know
25 that?

I6CJGAL7

Martin - cross

1 A. No.

2 Q. Did you ever talk to Mr. Cooney about where he grew up?

3 A. No.

4 Q. So you were never able to verify what Jason Galanis told
5 you as far as them being childhood friends, correct?

6 A. Yes, I actually was.

7 Q. You knew that they were friends, right?

8 A. Yes.

9 Q. You said that you met him two years ago, but you don't
10 recall meeting him before two years ago?

11 A. Correct.

12 Q. In fact, you and Mr. Cooney were, you were -- you weren't
13 best buddies, you didn't see each other a lot, but you were
14 friendly?

15 A. Yes.

16 Q. In fact, Mr. Cooney at one point introduced you -- you told
17 the government that Mr. Cooney had a lot of high profile
18 friends?

19 A. Correct.

20 Q. And he was a person who was a good resource in terms of
21 raising capital?

22 A. What's the question there?

23 Q. Well, Jason Galanis told you that in terms of raising
24 capital, that Mr. Cooney was a good source of raising capital
25 because he had high profile friends?

I6CJGAL7

Martin - cross

1 MR. SCHWARTZ: Objection.

2 THE COURT: I'll allow that.

3 A. Yes.

4 Q. You knew he had been a part owner of the Viper Room in Los
5 Angeles?

6 A. Bevan Cooney mentioned that to me.

7 Q. And, in fact, he introduced you to the wife of Wayne
8 Gretzky, the famous hockey player?

9 MS. MERMELSTEIN: Objection.

10 THE COURT: Sustained.

11 MS. NOTARI: May we approach, your Honor?

12 THE COURT: Sure.

13 (Continued on next page)

14

15

16

17

18

19

20

21

22

23

24

25

I6CJGAL7

Martin - cross

1 (At sidebar)

2 MS. NOTARI: So he testified on direct examination
3 about this phone call, and out of the blue they didn't have any
4 type of social relationship, so we think it is very fair for me
5 to get exactly what the nature of the relationship was.

6 MS. MERMELSTEIN: I don't have any objection about how
7 frequently they met or kinds of things they did socially. The
8 fact that is being suggested, Mr. Cooney is friends with Wayne
9 Gretzky seems completely irrelevant to me, and I think with
10 respect to questions about what Mr. Cooney told him about
11 Mr. Cooney himself, I understand if he had actual knowledge,
12 fine, but they're just calling for hearsay because they're
13 calling for what Mr. Cooney told about himself, and it is not
14 to show anything other than, for example, Mr. Cooney owned the
15 Viper Room, and those are improper.

16 THE COURT: I don't think it is relevant what Wayne
17 Gretzky or his wife said. Stay with that and be careful not to
18 ask questions about what Cooney told him. You can ask
19 questions about the relationship.

20 MS. NOTARI: Okay.

21 (Continued on next page)

22
23
24
25

I6CJGAL7

Martin - cross

1 (In open court)

2 (Off-the-record discussion)

3 (Jury excused)

4 (Recess)

5 THE COURT: Is there a sense of anything I can tell
6 the jury about scheduling? I was thinking tomorrow we just sit
7 from 9:30 till 11:30, ideally with no break, and then take a
8 half an hour and then sit from 12:00 to 2:00, so we have four
9 solid hours of testimony with no other breaks than the half
10 hour. Does that work?

11 If you don't finish with a witness, I'll stay later, I
12 will be late, but it sounds like you need to leave early anyway
13 tomorrow because you have those witnesses who can't start until
14 Monday.

15 MR. TOUGER: Your Honor, it won't take two hours. I
16 don't mean to be blunt, but --

17 THE COURT: Let's try and we can't just sort of see
18 where we are. Is there a way to do it without excusing the
19 jury and taking 15 minutes each time? We can talk about it
20 privately. I don't want to do this publicly.

21 MS. MERMELSTEIN: With respect to scheduling, your
22 Honor, I think that works for the government. I think that I
23 expect -- I think I can say this -- I expect there will be
24 cross-examination for some not insignificant part of tomorrow
25 if not all of tomorrow given the estimates from defense

I6CJGAL7

Martin - cross

1 counsel. We have at least two more witnesses tomorrow and
2 email reading that needs to be done, so I think if we're
3 planning on sitting roughly four hours, we can comfortably not
4 bring -- sorry.

5 (Off-the-record discussion)

6 MS. MERMELSTEIN: So I think that comfort --

7 THE COURT: I'll bring the jury back in. Sorry. Tell
8 me until they get here.

9 MS. MERMELSTEIN: We can solidly, comforted be able to
10 rely we can fill the time until 2:00 o'clock and not need the
11 BIT Board witnesses or the two that can't testify until Monday.

12 THE COURT: You still think you're resting on Monday?

13 MS. MERMELSTEIN: Yes.

14 MR. SCHWARTZ: There are two more people that have to
15 go tomorrow. Is there anyone that needs to get off tomorrow?

16 MS. MERMELSTEIN: No. I sorry. I take that back.

17 There is one witness tomorrow who is very short who is
18 on vacation following the end of this week. We can always take
19 witnesses out of order if that creates a problem for you guys.

20 MR. QUIGLEY: Just one second.

21 THE COURT: Is there anything defense counsel feel
22 like they can tell me about their cases just as it bears on
23 scheduling so I can give the jury some sense of their future?

24 MR. SCHWARTZ: I am not sure I share the government's
25 optimism they will rest on Monday, but I think I don't want to

I6CJGAL7

Martin - cross

1 speak --

2 (Jury present)

3 THE COURT: Thanks, folks. Everyone can be seated.
4 You can proceed, Ms. Notari.

5 BY MS. NOTARI:

6 Q. I just want to go back to one question. You said that when
7 Jason was arrested, you were concerned because your name was
8 all over the bonds.

9 During the time that you learned that he had been
10 arrested, did you discuss what you're concerned about, your
11 involvement in this case with anyone?

12 A. I don't specifically remember with who, but I obviously
13 discussed it with some people.

14 Q. Do you recall telling the government that you did not
15 discuss it with anybody?

16 A. I don't remember that.

17 Q. You don't remember that? Okay.

18 So now getting back to Mr. Cooney, you said that you
19 were friendly with him, and there was testimony earlier that
20 you went to a celebratory lunch after the bonds, the first
21 bonds?

22 A. Yes.

23 Q. You said that there were approximately two or three times
24 you met with him in social settings, correct?

25 A. I remember specifically two.

I6CJGAL7

Martin - cross

1 Q. But you don't remember the times you met him, where you
2 went?

3 A. I do.

4 Q. You do? And they were mostly bars and restaurants?

5 A. Correct.

6 Q. You said that you agreed that he had some high profile
7 friends, correct?

8 A. Correct.

9 Q. Did you meet any of those high profile friends? Did he
10 introduce you to any?

11 MS. MERMELSTEIN: Objection.

12 THE COURT: Sustained.

13 BY MS. NOTARI:

14 Q. Now, you didn't really see each other more than two or
15 three times, but again you were friendly and, in fact, you were
16 Instagram friends, correct?

17 A. Correct.

18 Q. In fact, you're still Instagram friends, correct?

19 A. Correct.

20 Q. You recently went on a travel vacation throughout Europe,
21 and Mr. Cooney liked one of your vacation photos?

22 MS. MERMELSTEIN: Objection.

23 THE COURT: Sustained.

24 BY MS. NOTARI:

25 Q. Now, you testified that you met with the government many

I6CJGAL7

Martin - cross

1 times, correct?

2 You met with them -- let's go through your memory of
3 the meetings. You met with them on February 8th, 2016. Do you
4 recall that?

5 A. I don't really recall dates specifically.

6 Q. But you remember the Starbucks meeting in West Hills,
7 California?

8 A. Yes.

9 Q. And that was around the beginning of February 2016?

10 A. Yes.

11 Q. Then subsequently there was a meeting in March of 2016?

12 A. Video conference, yes.

13 Q. A video conference?

14 And then there was another meeting in April of 2016?

15 A. Yes, another video conference.

16 Q. Then there was a period of sort of quiet where you didn't
17 speak to the government about this case?

18 A. Correct.

19 Q. At that time you were living in Europe?

20 A. Yes.

21 Q. During that time that you were living in Europe, you were
22 consulting with your lawyer in this case?

23 MS. MERMELSTEIN: Objection, your Honor.

24 THE COURT: I'll allow that.

25 A. Yes.

I6CJGAL7

Martin - cross

1 BY MS. NOTARI:

2 Q. Now, during these early meetings in 2016, again these were
3 close in time to the events involving the bond, correct?

4 A. Involving the bond in what sense?

5 Q. Well, the date, if we go back in time, early 2016 is closer
6 to the time when you agreed to be the investment manager,
7 correct?

8 A. Yes.

9 Q. During those early meetings the government asked you many,
10 many questions about your involvement in the case?

11 A. Yes.

12 Q. They asked you the involvement of other people in the case,
13 correct?

14 A. Correct.

15 Q. And you told them everything you could remember about
16 everybody that was involved in this case?

17 A. I don't remember saying everything that I knew.

18 Q. You told them the important details that you knew? They
19 asked you questions, and you provided them with answers,
20 correct?

21 A. I gave them answers, yes.

22 Q. It is fair to say that you knew that they were trying to
23 prosecute other people in this case?

24 A. Yes.

25 Q. In fact, you knew that they were trying to prosecute at the

I6CJGAL7

Martin - cross

1 time Hugh Dunkerley?

2 MS. MERMELSTEIN: Objection, your Honor.

3 THE COURT: Sustained.

4 BY MS. NOTARI:

5 Q. They asked you questions about individuals involved with
6 the bond transaction, correct?

7 A. Correct.

8 Q. During those meetings, you told them what you knew,
9 correct?

10 A. A lot of what I knew.

11 Q. Now, you said earlier Ms. Mermelstein asked you a question
12 about your truthfulness, and you said that in the beginning of
13 these meetings you were not truthful. Is that right?

14 A. I wouldn't call it I wasn't truthful. Sometimes I was not
15 truthful.

16 Q. So sometimes not being truthful is called a lie. Is that
17 right?

18 A. It is not a blanket. You're making a blanket statement.

19 Q. Okay. So, first of all, you understood that you were
20 required to tell the truth?

21 A. Yes.

22 Q. I am sure they told you that it was a federal offense to
23 lie to a federal investigator?

24 A. Yes.

25 Q. And they told you it was a federal offense to lie to a

I6CJGAL7

Martin - cross

1 prosecutor?

2 A. Yes.

3 Q. So is it your testimony today that you didn't tell the
4 truth back in early 2016, or you did tell the truth?

5 A. My testimony is that I to a large extent I said the truth,
6 sometimes I lied, and I didn't come forward with all the things
7 that I knew.

8 Q. Okay. And so at what point did you decide to come forward
9 and tell everything that you knew?

10 A. Probably when I was in Spain.

11 Q. Can you give us a time-frame, a date?

12 A. No, I don't.

13 Q. You don't remember when you decided to tell the whole
14 truth?

15 A. No.

16 Q. Do you think it was in 2016?

17 A. I don't remember.

18 Q. So you don't want to put -- do you think that it was at the
19 end of 2016?

20 A. I think it was closer to 2018.

21 Q. So closer to 2018, you decided to tell the truth?

22 A. I decided to come forward with more information, yes.

23 Q. Okay. And you decided, there was an original trial date in
24 this case of April 30th?

25 MS. MERMELSTEIN: Objection, your Honor.

I6CJGAL7

Martin - cross

1 THE COURT: Yes, sustained.

2 BY MS. NOTARI:

3 Q. So it is fair to say that in 2018, you started meeting with
4 the government because you knew that you were likely to be
5 testifying at trial?

6 A. I didn't know then that I was going to be testifying.

7 Q. You didn't know?

8 Let me ask you, did you realize that when you were
9 speaking to the government in 2016, that the federal
10 investigators were taking down your words as part of a federal
11 investigation?

12 A. I was assuming so.

13 Q. Did you realize that they were asking you questions to
14 determine the liberty of certain people who were being charged
15 in this case?

16 MS. MERMELSTEIN: Objection.

17 THE COURT: Sustained.

18 BY MS. NOTARI:

19 Q. Did you realize that the answers you were giving were being
20 relied upon by prosecutors in making decisions in this case?

21 MS. MERMELSTEIN: Objection.

22 THE COURT: Sustained.

23 BY MS. NOTARI:

24 Q. What was your understanding of what your responsibilities
25 were when you were speaking to the government?

I6CJGAL7

Martin - cross

1 A. To give information of the questions that they asked.

2 Q. You knew you were supposed to be telling the truth?

3 A. Correct.

4 Q. So now you're telling us that you weren't telling the
5 truth?

6 A. Again it is a blanket statement.

7 Q. So we're here to decide which particular sessions with the
8 government you were telling the truth and which were not. Is
9 that what we're supposed to decide here today?

10 THE COURT: Sustained.

11 BY MS. NOTARI:

12 Q. Let's focus on your meetings with the government.

13 Now, Ms. Mermelstein previously mentioned the word,
14 "safe passage letter"?

15 A. Yes.

16 MS. NOTARI: Your Honor, at this time I would like to
17 move into evidence Defense Exhibit 3760 through 3761.

18 MS. MERMELSTEIN: May we approach, your Honor?

19 THE COURT: Sure.

20 (Continued on next page)

I6CJGAL7

Martin - cross

1 (At sidebar)

2 (Off-the-record discussion)

3 MS. MERMELSTEIN: I object. I don't think they're
4 admissible. To the extent there is relevance of the fact of
5 them, the witness testified and he can be asked about them. I
6 secondarily want to note we have been operating on an agreement
7 throughout, the parties throughout the trial about
8 identification of exhibits. We offered our exhibits with these
9 witness and did not identify, and Ms. Notari did not provide us
10 with any exhibits she intended to use. If she is trying to
11 offer it, it is not for impeachment and we at lunch time before
12 the lunch break, I said on the record my understanding is we
13 got exhibits from Mr. Schwartz, Mr. Touger, we didn't get any
14 from Ms. Notari. I assume there are none.

15 MS. NOTARI: I have to say for starters the terms of
16 the agreement were completely breached. This was not my
17 intention because I normally thought this stuff goes into
18 evidence. I thought --

19 THE COURT: Usually the cooperation agreement doesn't
20 legally go into evidence until cross-examination unless there
21 is consent. I don't know why you think that. In any event, I
22 think it is proper for you to use them. I will admit them.
23 You're familiar with them so --

24 MR. SCHWARTZ: So the record is clear, I was going to
25 use the safe passage letters.

I6CJGAL7

Martin - cross

1 THE COURT: I am letting you both use them.

2 MS. NOTARI: What about the proffer statements? We
3 are not going into the order.

4 MS. MERMELSTEIN: You want to put in the proffer
5 agreement itself?

6 MS. NOTARI: Yes.

7 MS. MERMELSTEIN: I don't think that is admissible,
8 either. I don't think they're admissible, your Honor.

9 MS. NOTARI: The proffer agreements?

10 MR. QUIGLEY: What is the relevance? It doesn't show
11 bias.

12 MR. SCHWARTZ: Of course, it does. He was immunized
13 for his statements then, like now.

14 THE COURT: You can use the proffer agreements. You
15 can use the cooperation agreement. I don't have any problem
16 with that. Just try to be more careful when you ask questions
17 and try to be careful when you're trying to impeach him.

18 MS. NOTARI: Do you have a problem with the proffer
19 agreements in evidence?

20 THE COURT: I don't.

21 (Continued on next page)

22

23

24

25

I6CJGAL7

Martin - cross

1 (In open court)

2 MS. NOTARI: Your Honor, I offer Defense Exhibits
3 3760, 61, 63, which is 3522-4 as far as 3500 material, and
4 Defense Exhibit 3764, which is 3522-3, the 3500 material.

5 MS. MERMELSTEIN: No objection.

6 (Defendant's Exhibits 3760, 3761, 3763, 3764 received
7 in evidence)

8 BY MS. NOTARI:

9 Q. Mr. Martin, you met with the government on February 8, 2016
10 at the Starbucks, and at that time you were living in
11 California, correct?

12 A. Correct.

13 Q. You already said that you attended that meeting without a
14 lawyer, correct?

15 A. Correct.

16 Q. At some point, on March 27, 2018, the government provided
17 you with what is called a safe passage letter?

18 A. Correct.

19 Q. And specifically the letter, what was your understanding of
20 that letter?

21 A. My understanding was that I could fly in from Spain into
22 the United States and leave without being arrested.

23 Q. You were provided a letter that specifically said that
24 during your travel to the United States on or about March 25,
25 2018 until March 30, 2018, you can enter into the United States

I6CJGAL7

Martin - cross

1 and you could not be arrested or detained, correct?

2 A. Correct.

3 Q. That was specifically in relation to your providing
4 information as a witness in this case, correct?

5 MS. MERMELSTEIN: Objection.

6 THE COURT: Overruled. You can answer it.

7 A. It was so that I could come here and talk to the
8 government.

9 BY MS. NOTARI:

10 Q. So it is fair to say that they gave you this letter on
11 March 22, 2018 because you were living abroad, correct?

12 A. Correct.

13 Q. It is fair to say that after your February 8th, 2016 with
14 the government, you decided to move abroad?

15 A. After, yes, it was after, yes.

16 Q. You decided to get out of the United States?

17 MS. MERMELSTEIN: Objection, your Honor.

18 THE COURT: Overruled.

19 A. Yes, I left the United States.

20 Q. And your children live, they were living at the time in
21 California?

22 MS. MERMELSTEIN: Objection, your Honor, to questions
23 about Mr. Martin's children.

24 THE COURT: Sustained.

25 Q. Your family was living in California?

I6CJGAL7

Martin - cross

1 MS. MERMELSTEIN: Objection.

2 THE COURT: Sustained.

3 Q. So you consulted with your attorney. You did not
4 personally ask the government for a safe passage letter,
5 correct?

6 A. Correct.

7 Q. Your lawyer negotiated this for you?

8 A. Correct.

9 Q. It is fair to say that it was not your intention to come
10 back to the United States unless you had one of these letters.
11 Is that right?

12 A. Correct.

13 Q. At some point you continued to live abroad, correct?

14 A. Yes.

15 Q. On March 23rd you had a video teleconference with the
16 government?

17 A. When?

18 Q. March 23rd, 2016?

19 A. It could be. I don't remember the exact date.

20 Q. You were provided a safe passage letter, dated March 22nd,
21 2018 and you came to the United States, correct?

22 A. Yes.

23 Q. And you had meetings with the government on March 27, 2018
24 and on March 29th, 2018?

25 A. I don't have the exact dates, but that sounds about right.

I6C7GAL8

Martin Fernandez - Cross

1 Q. Then subsequently after your meetings, you went back to --
2 were you living in Spain?

3 A. Yes.

4 Q. And there came a time when the government wanted you to
5 again return to the United States for your testimony here in
6 this Court, and they provided you with another safe passage
7 letter?

8 A. Yes.

9 Q. So you were assured that you were not going to be arrested
10 in connection with your providing information on this case
11 during your visit?

12 A. Correct.

13 Q. And it is fair to say that if you violated the terms of
14 this letter, you could be arrested, correct?

15 MS. MERMELSTEIN: Objection. I think that misstates
16 the document.

17 THE COURT: Let's get at your understanding of the
18 letter.

19 THE WITNESS: My understanding is that I cannot be
20 arrested unless I do something during my time here, but I
21 cannot be arrested for my time that I'm here for the time-frame
22 that it states in this letter.

23 (Continued on next page)
24
25

I6C7GAL8

Martin Fernandez - Cross

1 Q. OK. Now, each time -- if we can have 3763 -- or 3522-4, if
2 that's easier.

3 Now, are you familiar with what is called a proffer
4 agreement?

5 A. Yes.

6 Q. And in connection with your providing information in this
7 case you signed a proffer agreement?

8 A. Yes.

9 Q. Now, the first time you met with the government in February
10 of 2016 you did not have any agreement with the government,
11 correct?

12 A. Correct.

13 Q. Was there a proffer agreement signed at that meeting?

14 A. No.

15 Q. It wasn't until after you went abroad and you spoke with a
16 lawyer that you were able to get a proffer agreement.

17 MS. MERMELSTEIN: Objection to questions about Mr.
18 Martin's communications with attorneys.

19 THE COURT: I didn't hear what you said.

20 MS. MERMELSTEIN: I'm sorry. Objection to questions
21 about Mr. Martin's communications with his attorneys.

22 THE COURT: Yes, we shouldn't get into that.

23 Q. So, the first proffer agreement that you signed, as far as
24 your memory, was when you spoke with the government -- I take
25 it you don't remember when you signed the first proffer

I6C7GAL8

Martin Fernandez - Cross

1 agreement -- but your first meeting with the government
2 telephonically after the Starbucks meeting, which was March 23,
3 2016.

4 A. What is the question?

5 Q. You signed a proffer agreement then.

6 A. Yes.

7 Q. And at that point you had a lawyer advising you, correct?

8 I'm not getting into the communications, your Honor.

9 MS. MERMELSTEIN: Objections to the questions about
10 the lawyer, your Honor.

11 THE COURT: Try and stay away from his communications
12 with his lawyer.

13 Q. Now I'd like to focus on what this proffer statement
14 says -- agreement.

15 It was your understanding at this time that there was
16 no yet promise or immunity that you were not going to be
17 prosecuted for your involvement in this case, correct?

18 A. Correct.

19 Q. And it was understanding at the time that you signed this
20 proffer agreement that there was again -- again there was no
21 promise to you that you were not going to be prosecuted.

22 A. Correct.

23 Q. I'd like to focus on the second paragraph. If we can
24 highlight that.

25 If we look at paragraph 2, this paragraph, as you

I6C7GAL8

Martin Fernandez - Cross

1 understood it, said that in any prosecution against you by the
2 United States Attorney's office -- it says "this office, and
3 you understood that that meant the United States Attorney's
4 office for the Southern District of New York, correct?

5 A. Correct.

6 Q. And for those of us who don't know what that is, that is
7 the prosecutors in this case who are seated to the left of me
8 are prosecutors from this office, the Southern District of New
9 York, correct?

10 A. Yes.

11 Q. And it was your understanding that any statement that you
12 made could not be used against you if they chose to prosecute
13 you in their case in chief.

14 A. Yes.

15 Q. And it was also your understanding that if at a later point
16 you went to trial or were convicted and sentenced, that any
17 statement you made could not be used against you unless you
18 lied.

19 A. Correct.

20 Q. And each time you met with the government after the
21 Starbucks meeting you signed this proffer agreement, correct?

22 A. Correct.

23 Q. And it's fair to say that you would not have spoken to the
24 government if you did not have this proffer agreement in place.

25 A. Correct.

I6C7GAL8

Martin Fernandez - Cross

1 Q. And you signed this proffer agreement every time you met
2 with the government after the Starbucks meeting, correct?

3 A. Correct.

4 Q. So you knew that all of the statements you were giving were
5 being given because they couldn't be used against you.

6 A. Correct.

7 Q. Now, during this time period you did not have what is
8 called an immunity agreement, correct?

9 A. Correct.

10 Q. You were -- it's fair to say that you were hoping for an
11 immunity agreement.

12 A. I don't remember if I was hoping for an immunity agreement.

13 Q. Well, you discussed with the prosecutors the possibility
14 that they would seek a formal order of immunity, which means
15 that you could not be prosecuted.

16 A. When? When are you talking about this? During the
17 sessions?

18 Q. Did you ever talk about an order of immunity with the
19 government?

20 A. Later on, yes.

21 Q. You did. And what did you talk about?

22 A. Specify, please.

23 Q. You said that you talked -- you had discussions with the
24 government about an order of immunity. Can you give us -- can
25 you remember what you talked about?

I6C7GAL8

Martin Fernandez - Cross

1 A. I don't remember specifically what we discussed about the
2 immunity agreement.

3 Q. It's fair so say that your hope was that you would get an
4 immunity order and that you would not be prosecuted for your
5 involvement in this case.

6 A. Of course.

7 Q. And it's fair to say that if you didn't get an immunity
8 order, you probably would not have come back here to testify.

9 A. That's right.

10 Q. You would have continued to live abroad.

11 A. Correct.

12 Q. And I noticed -- I'll withdraw that. Now, today you
13 received an order of immunity, correct?

14 A. Yes.

15 Q. Earlier today you were sworn and you received your official
16 order of immunity, correct?

17 MS. MERMELSTEIN: Objection.

18 THE COURT: Sustained.

19 Q. Mr. Martin, today was a monumental day in your life,
20 correct?

21 MS. MERMELSTEIN: Objection.

22 THE COURT: Yes, sustained.

23 Q. In all the months -- in all the years you have been talking
24 to the government, you only had what is called a proffer
25 agreement, correct?

I6C7GAL8

Martin Fernandez - Cross

1 A. Correct.

2 Q. This was just a promise that your statements would not be
3 used against you, correct?

4 A. Correct.

5 Q. But today you got a more official order of immunity,
6 correct?

7 MS. MERMELSTEIN: Objection.

8 THE COURT: I'll allow that.

9 You can answer that.

10 A. Yes.

11 Q. And you are testifying here pursuant to a court ordered
12 immunity, correct?

13 A. Correct.

14 Q. That means that the government asked the court on your
15 behalf to grant you what we call immunity under the law in
16 exchange for your testimony.

17 MS. MERMELSTEIN: Objection.

18 THE COURT: I'll allow that.

19 A. Yes.

20 Q. You, with the assistance of your lawyer, asked for this
21 grant of immunity?

22 THE COURT: Let's leave the lawyer out of it.

23 Q. You asked for this grant of immunity.

24 A. I didn't specifically ask for this, no.

25 Q. OK. And, again, you agree that without this order of

I6C7GAL8

Martin Fernandez - Cross

1 immunity you would not be testifying here.

2 A. Correct.

3 Q. And you understand what immunity means, correct?

4 A. I believe I do.

5 Q. That nothing you say here in court can ever be used against
6 you in other court proceedings.

7 A. That's the way I understand it.

8 Q. So, the government cannot take your testimony and use it as
9 evidence in a criminal case against you.

10 A. Whatever I say here cannot be used against me, yes.

11 Q. And you wanted this immunity to protect you from being
12 prosecuted criminally in this case.

13 A. For testifying, yes.

14 Q. And you now know that your testimony cannot be used in this
15 way.

16 A. Correct.

17 Q. That no matter what you testify to here in court today,
18 your testimony cannot be used later against you.

19 A. I wouldn't say no matter. If I'm truthful it cannot be
20 used against me.

21 Q. Now, it's your understanding that after you testify in
22 these proceedings and there is no more asked of you, that
23 you're not going to be charged in this case, correct?

24 A. That is not my understanding.

25 Q. That's not your understanding?

I6C7GAL8

Martin Fernandez - Cross

1 A. No.

2 Q. Do you still think you can be prosecuted?

3 A. I could be.

4 Q. And an order of immunity is essentially a free pass that
5 the government has asked the court to give you.

6 A. I wouldn't call it a free pass.

7 Q. What would you call it?

8 A. I would call it that it protects me from whatever I say
9 today here in testimony, it could not be used against me.

10 Q. OK. And you know that this is probably the best protection
11 that a witness can get in a federal case.

12 MS. MERMELSTEIN: Objection.

13 THE COURT: Sustained.

14 Q. Your understanding is that -- your understanding is that
15 the government prosecutors -- again this is your belief -- are
16 not going to prosecute in this case.

17 MS. MERMELSTEIN: Objection. Asked and answered.

18 THE COURT: Yes, he answered that. Let's move on.

19 Q. Now, in this case Jason Galanis instructed you to do things
20 that were against the federal laws of the United States.

21 A. Yes.

22 Q. And in this case you submitted false documents to the SEC?

23 A. Yes.

24 Q. In this case you created a fake company called Calvert?

25 A. I created the company.

I6C7GAL8

Martin Fernandez - Cross

1 Q. And it's not a real company, right?

2 A. It is formally formed in the United Kingdom.

3 Q. But is it a real company or a fake company? Is it a real
4 company, Calvert?

5 A. What do you mean by real or fake? It exists. It's a
6 real -- it was incorporated.

7 Q. And did you create a name for that company?

8 A. Yes.

9 Q. And you made up the name?

10 A. Yes.

11 Q. That was based on a street that you lived in during your
12 childhood?

13 A. That is not correct. During my childhood I was living in
14 Switzerland.

15 Q. So this was just a street you lived on during your adult
16 years.

17 A. It was a cross street of a street that I used to live three
18 years ago.

19 Q. In this case Ms. Mermelstein she asked you a lot of
20 questions about the crimes you committed in this case, correct?

21 A. She asked me a lot of questions.

22 Q. And you admitted that you committed several crimes. Fraud?

23 A. I admitted that I did, yes.

24 Q. And your understanding is that this order of immunity
25 protects you from those -- from being charged in this case for

I6C7GAL8

Martin Fernandez - Cross

1 those crimes that you admitted to.

2 MS. MERMELSTEIN: Objection. Asked and answered.

3 THE COURT: Sustained.

4 Q. Mr. Martin, I notice that your lawyer is not here today.

5 MS. MERMELSTEIN: Objection, your Honor.

6 THE COURT: Sustained. Let's stay away from the
7 lawyer.

8 Q. Now, you testified that you lied about wire transactions?

9 A. Can you be more specific?

10 Q. No, it's OK, we'll leave it at that.

11 Are we going to 5:30, your Honor?

12 THE COURT: We are.

13 MS. NOTARI: OK.

14 THE COURT: Are you almost done?

15 MS. NOTARI: Yeah, I just have a few more minutes.

16 If I could have just one minute. I'm wrapping up.

17 Q. Mr. Martin, since you've -- we've already established that
18 you have moved back to Europe.

19 A. Yes.

20 Q. And you've been able to travel freely throughout this case?
21 You have no bail conditions.

22 A. I understand there is none.

23 Q. You don't have to report to any type of pretrial services
24 officer.

25 MS. MERMELSTEIN: Objection.

I6C7GAL8

Martin Fernandez - Cross

1 THE COURT: Yes, sustained.

2 Q. And since -- as I said earlier, since you've been a witness
3 in this case it's been many years, correct?

4 A. I don't understand the question.

5 Q. Well, you've been pending your testimony here today for at
6 least two years.

7 A. I mean, yes, you can say that.

8 Q. And you've traveled extensively throughout Europe during
9 that time?

10 MS. MERMELSTEIN: Objection.

11 THE COURT: I think we've been through this.

12 Q. Now, you testified -- well, I'll withdraw that question.

13 It's fair to say that this has been a very difficult
14 part of your life?

15 A. Yes.

16 Q. And you've testified that you admitted to crimes in this
17 case?

18 A. Yes.

19 Q. And last week on Instagram you posted that you have
20 absolutely --

21 MS. MERMELSEIN: Objection. Objection. Objection.

22 THE COURT: Sustained.

23 Q. Did you recently post on Instagram --

24 MS. MERMELSTEIN: Objection.

25 Q. -- that you have no regrets?

I6C7GAL8

Martin Fernandez - Cross

1 MS. MERMELSEIN: Objection.

2 THE COURT: OK, sustained. Sustained. Sustained.

3 MS. NOTARI: May we approach?

4 THE COURT: OK.

5 (Continued on next page)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I6C7GAL8

Martin Fernandez - Cross

1 (At the side bar)

2 MS. NOTARI: Your Honor, I think it's fair.

3 THE COURT: What is the Instagram post?

4 MS. NOTARI: It says that it's been a long journey but
5 he has -- he was coming back from Italy to the United States,
6 and he said it's been a long journey, but I have absolutely no
7 regrets.

8 THE COURT: Is he talking about his life? Italy?

9 MS. NOTARI: Well, no, I think he is talking about the
10 long journey and this case and he was traveling from --

11 THE COURT: Is he talking about the case on Instagram?

12 MS. MERMELSTEIN: No.

13 MS. NOTARI: Well, we don't know, but I still think
14 it's a fair --

15 MR. SCHWARTZ: It's nonspecific.

16 THE COURT: I will let you ask that question, but you
17 are now going over the same things over and over. Frankly,
18 you're torturing the jury, and I don't think you're doing your
19 client a service. So, you can ask the question about the
20 Instagram post, but otherwise I really want you to move on.

21 MS. NOTARI: OK.

22 (Continued on next page)

23

24

25

I6C7GAL8

Martin Fernandez - Cross

(In open court)

BY MS. NOTARI:

Q. Mr. Martin, do you recall posting on Instagram five days ago? At this time during your post you were in Italy right before you came back to the United States; is that right?

A. Correct.

Q. And you posted "It has been a very long journey, but absolutely no regrets." Do you recall posting that?

A. Absolutely.

Q. And it's fair to say that in this case you got your immunity and you have no regrets?

MS. MERMELSTEIN: Objection.

THE COURT: Sustained.

Q. It's fair to say you have no regrets.

MS. MERMELSEIN: Objection.

THE COURT: Is that true? Do you have any regrets about your conduct in connection with this case?

WITNESS: In connection with this case I do have many regrets, but that statement on Instagram has absolutely nothing to do with this case.

MS. NOTARI: No further questions.

THE COURT: OK.

MR. TOUGER: Your Honor?

THE COURT: Yes, please. Thank you.

I6C7GAL8

Martin Fernandez - Cross

1 CROSS EXAMINATION

2 BY MR. TOUGER:

3 Q. Good afternoon. My name is David Touger, and I represent
4 John Galanis.

5 A. Good afternoon.

6 Q. You testified earlier that you thought private equity was
7 not a proper investment for the bond proceeds. Do you remember
8 saying that?

9 A. Yes.

10 Q. Did you ever speak to a man named Raycen Raines?

11 A. It doesn't ring a bell.

12 Q. Did you ever speak to a woman named Geneva Lonehill?

13 A. No.

14 Q. Did you ever speak to a man named Steven Haynes?

15 A. It doesn't ring a bell.

16 Q. Did you ever speak to a man named Tim Anderson?

17 A. Don't recall.

18 Q. Did you ever speak to any lawyers at Dilworth Paxson?

19 A. Not to my knowledge.

20 Q. Did you ever speak to a woman named Heather Thompson?

21 A. No.

22 Q. Did you speak to any lawyers at Greenberg Traurig?

23 A. During my life I have.

24 Q. In relation to this case.

25 A. No, I don't think so.

I6C7GAL8

Martin Fernandez - Cross

1 Q. Did you ever speak to anyone about the Wakpamni bonds
2 besides Jason Galanis?

3 A. Yes.

4 Q. Who?

5 A. Hugh Dunkerley.

6 Q. Besides those two?

7 A. Bevan Cooney.

8 Q. And that was after you had already been signed on as the
9 investment manager, correct?

10 A. I don't recall the exact timing.

11 Q. And you spoke to the government about these bonds, right?

12 A. Correct.

13 Q. And do you even know what the WLCC is?

14 A. Now I do.

15 Q. You didn't know back then though, right?

16 A. I never --

17 Q. You never heard that term.

18 A. I might have, but I didn't remember.

19 Q. And you have no knowledge about Native American financing,
20 correct?

21 A. No.

22 Q. You have never been involved in any Native American
23 financial deals.

24 A. No.

25 Q. And you have never been involved with any Native American

I6C7GAL8

Martin Fernandez - Cross

1 corporation.

2 A. No.

3 Q. And you have no knowledge as to whether the Wakpamni
4 Corporation -- do you know they are the issuers of the bonds?

5 A. I do.

6 Q. And do you have any knowledge that they had any lawyers
7 representing them in this case?

8 A. I don't.

9 Q. And do you have any knowledge as to whether the Wakpamni
10 Corporation agreed to the terms in the investment agreement?

11 A. I don't.

12 Q. Do you have any knowledge whether they were advised by
13 counsel when they signed that investment agreement?

14 A. I don't.

15 Q. Do you have any knowledge about how the deal was
16 negotiated?

17 A. No.

18 Q. About the months of negotiation that went into making this
19 deal?

20 A. No.

21 Q. And you basically have no independent knowledge of this
22 deal whatsoever.

23 A. Whatsoever, I wouldn't say that.

24 Q. You have independent knowledge about this deal?

25 A. What do you mean by that?

I6C7GAL8

Martin Fernandez - Cross

1 Q. When you signed on as investment manager, had you done any
2 independent investigation of this bond deal?

3 A. No.

4 Q. And yet in your opinion, based on all that vast knowledge,
5 the private equity was not a valid investment for the bond
6 proceeds.

7 MS. MERMELSTEIN: Objection.

8 THE COURT: You can answer that.

9 A. I've been in the business for 20 years; I know what is
10 suitable for an investment management to do.

11 Q. You're the one sitting there with immunity, right?

12 MS. MERMELSTEIN: Objection, your Honor.

13 THE COURT: Sustained.

14 Q. As a matter of fact, you testified just recently, just
15 before, that when you signed -- would you agree that the first
16 thing you did relative to this deal was sign the investment
17 management agreement?

18 A. Yes.

19 Q. And that was the beginning of your involvement, right?

20 A. Correct.

21 Q. And didn't you just testify 20 minutes ago that in the
22 beginning you had no questions about the bonds?

23 A. You can say that.

24 Q. And when you signed the investment agreement -- you signed
25 it, right?

I6C7GAL8

Martin Fernandez - Cross

1 A. Yes.

2 Q. That was your signature.

3 A. It was.

4 Q. Did you read the document before you signed it?

5 A. I don't remember every detail of the document, no.

6 Q. I didn't ask you if you remembered every detail; I asked
7 you do you remember reading the document before you signed it.

8 A. I don't remember.

9 Q. So you signed a document without reading it.

10 A. I didn't say that.

11 Q. OK. Did you read the document or did you not read the
12 document?

13 A. I said I don't remember reading the document.

14 Q. Would you sign documents without reading them in your
15 normal course of conduct?

16 A. Usually I wouldn't.

17 Q. Usually you'd read them first, right?

18 A. Correct.

19 Q. So more than likely you read this document before you
20 signed it.

21 A. Most likely.

22 Q. And when you signed it, it clearly states in that document
23 that the funds were going to be involved -- were going to be
24 invested in private equity, right? You read that paragraph.

25 A. Yes.

I6C7GAL8

Martin Fernandez - Cross

1 Q. That's the very beginning when you sign it, and you just
2 testified 20 minutes ago you had no problem, but today you have
3 a problem with the money being invested in private equity.

4 MS. MERMELSTEIN: Objection to form, your Honor.

5 THE COURT: The objection is to form?

6 MS. MERMELSTEIN: Yes, your Honor.

7 THE COURT: Can you rephrase that, please.

8 MR. TOUGER: Sure.

9 Q. Today you testified that in the very beginning you had no
10 problem with the bond deal.

11 A. Correct.

12 Q. You read that paragraph before you signed the agreement,
13 more than likely.

14 A. Correct.

15 Q. That was the beginning of your involvement in the bond
16 deal.

17 A. Correct.

18 Q. And today you're testifying though that private equity is
19 not a valid agreement -- not a valid investment for the bond
20 proceeds.

21 A. I didn't exactly say it that way.

22 Q. So you think it is a valid investment for the bond
23 proceeds.

24 A. Not for the entirety.

25 Q. Excuse me?

I6C7GAL8

Martin Fernandez - Cross

1 A. You cannot invest the full amount into private equity if
2 you need a yield to be generated by the investment.

3 Q. Do you know where all the funds were invested?

4 A. No idea.

5 Q. No idea, right?

6 A. No idea, that's what I said.

7 Q. And I believe you also testified that you believed you were
8 not the only investment manager in this deal.

9 A. Correct.

10 Q. So the other funds could have been invested in perfectly
11 legitimate investments, correct, as far as you knew.

12 A. That's fair to say.

13 Q. Do you want to change your answer right now that private
14 equity could be a valid investment for the bond proceeds, or do
15 you want to stay with it?

16 MS. MERMELSTEIN: Objection to the badgering of the
17 witness.

18 THE COURT: Yes, why don't you just change your tone a
19 little bit.

20 MR. TOUGER: I will be nicer.

21 THE COURT: And watch the sarcasm, also unhelpful.
22 But you can ask another question.

23 Q. Do you want to change your answer now that private equity
24 could possibly be a good investment for the bond proceeds?

25 A. I can give you the long form if you want to.

I6C7GAL8

Martin Fernandez - Cross

1 Q. Excuse me?

2 A. I can give you the long form if you want to.

3 Q. I don't know what that means.

4 A. I will just say what I think it is if you allow me.

5 Q. I don't know what you're saying. Is private equity a good
6 investment or not?

7 A. It depends.

8 Q. It depends. It could be or it could not be.

9 A. Correct.

10 Q. Right?

11 A. Correct.

12 Q. And you have no way of judging in this case whether it was
13 or was not, because, one, you don't know where the other funds
14 were invested.

15 A. Correct.

16 Q. Two, you talked to nobody involved on the Wakpamni side of
17 the investment, right?

18 A. Correct.

19 Q. Three, you talked to none of the lawyers who negotiated
20 this deal.

21 A. Correct.

22 Q. And, four, you have never done any -- you have no
23 involvement with Native American financing, or Native American
24 corporations, or Native American deals, right?

25 A. Correct.

I6C7GAL8

Martin Fernandez - Cross

1 Q. Thank you.

2 Now, you said Calvert is a real company, right?

3 A. It was incorporated, yes.

4 Q. It's a real company, it exists.

5 A. Yes.

6 Q. And it has real assets, right?

7 A. What do you mean by that?

8 Q. It has the WAH securities in it, right?

9 A. Correct.

10 Q. And you have no doubt that the WAH securities are real.

11 A. Sure.

12 MR. TOUGER: Your Honor, I think this is a good spot
13 to end.

14 THE COURT: OK. So why don't we adjourn for the day.

15 We're going to start -- I really would like to try and
16 start -- and I know you all have been so prompt, so thank you
17 for that -- promptly at 9:30 tomorrow. So there will be
18 breakfast at nine.

19 We have a short day tomorrow, but what we're going to
20 try and do is just take one break of half an hour in the middle
21 and not morning breaks. Maybe if someone needs to use the
22 restroom, we will take a two minute break. But we are just
23 going to have one short break and we will have a snack in the
24 middle, and we will leave early but we will try to get as much
25 done as we would otherwise.

I6C7GAL8

Martin Fernandez - Cross

1 So just remember keep an open mind, don't discuss the
2 case. And we will start promptly at 9:30 tomorrow. Thank you.

3 And you can step down. I will see you tomorrow
4 morning. Thank you.

5 (Jury not present)

6 THE COURT: Is there anything we need to talk about
7 before tomorrow, or is there any rulings you want for tomorrow
8 morning?

9 Just to give you a heads-up, I have something tomorrow
10 morning at nine, a short criminal conference, but I want you to
11 be here at 9:10 if you can so that we can address anything.

12 MR. QUIGLEY: Your Honor, I don't think we have
13 anything for tomorrow.

14 Just in terms of scheduling, I know we were kind of in
15 the midst of discussing that before. I think we anticipate
16 that this witness will be on cross I would think certainly the
17 entire morning, until 12:30, one o'clock.

18 THE COURT: Do you all have any estimates without
19 giving away any strategy?

20 MR. TOUGER: Can he go?

21 THE COURT: Yes, of course. Good night.

22 MR. SCHWARTZ: Long-term estimates or for the cross?

23 THE COURT: Both. I mean both the cross and long
24 term, whatever you feel comfortable telling me.

25 MR. TOUGER: I think I would agree with Mr. Schwartz's

I6C7GAL8

Martin Fernandez - Cross

1 analysis earlier that Monday is not realistic. I think that
2 the cross -- and prior to this afternoon we talked, and I think
3 the crosses will take the whole morning. Well, the cross --

4 THE COURT: The whole morning meaning the whole day
5 until 2?

6 MR. TOUGER: No, I don't think that. But I don't
7 think we will get to the witness they have the problem with the
8 flight.

9 MR. QUIGLEY: So, we have two relatively short
10 witnesses we can call tomorrow, and then we still have a bunch
11 of e-mails to read in, so that the witness who is flying in we
12 can call her off, because I think between the cross of Martin,
13 the two other witnesses and the e-mails, that will take us at
14 least until early afternoon, midafternoon.

15 THE COURT: Right.

16 MR. QUIGLEY: So just in terms of kind of long-term
17 scheduling, that leaves three I think kind of substantive
18 witnesses left for the government, potentially one or two
19 custodians -- depending on whether we can work out a
20 stipulation on a couple of things -- and potentially some
21 e-mails.

22 So, look, Monday, I guess I would tend to agree with
23 defense that I'm not certain that we will rest on Monday. I
24 think it will be Monday or Tuesday.

25 MR. TOUGER: Tuesday afternoon.

I6C7GAL8

Martin Fernandez - Cross

1 MR. QUIGLEY: Yeah, because I think each of -- they
2 know who the witnesses are. I think each of them individually
3 may have cross for one of those witnesses, because they each
4 pertain to one defendant.

5 THE COURT: All right. And are there any estimates
6 that you feel comfortable giving me about defense cases?

7 MR. TOUGER: We will know that better tomorrow. We're
8 still discussing that.

9 MS. MERMELSTEIN: Your Honor, with respect to the
10 defense cases, we would like sort of an updated defense witness
11 list. I think we should have it tomorrow at the close of the
12 case. That's less than a week before those people may take the
13 stand.

14 Counsel provided witness lists at the beginning of the
15 case. It's very clear that those were broad in an effort not
16 to be accused of not having disclosed, but they're not
17 realistic, and it's perfectly clear many of those people are
18 not testifying. So, I think less than a week out the
19 government is entitled to know -- other than the defendants of
20 course -- who is going to be taking the stand.

21 MR. TOUGER: Your Honor, at this time Mr. Galanis has
22 no witnesses.

23 MR. SCHWARTZ: I will tell you what I told the
24 government before -- which I think is fair -- one, I will
25 certainly let them know promptly people that we've struck off

I6C7GAL8

Martin Fernandez - Cross

1 our list so we know who is definitively eliminated; two, I will
2 let them know -- actually we haven't talked about who is going
3 to go first, but we will talk amongst ourselves and let the
4 government know tomorrow who would be called next week; and,
5 three, I think it's fair we can't give you a definitive or
6 close to definitive witness list until the government rests,
7 but you will get it a week ahead, as we've agreed.

8 THE COURT: Do you think we will be summing up next
9 week?

10 MR. SCHWARTZ: I don't think so. I mean what I told
11 the government is I think the following week is more realistic.

12 THE COURT: All right.

13 MS. MERMELSTEIN: It's hard for us to have an opinion.

14 THE COURT: No, I just want to make sure we're
15 building in time for the charge conference before summations.

16 MR. TOUGER: I agree with the court that we need to
17 build all this time in, and I don't think next week is a
18 realistic ending, so I think we're going into the week
19 afterwards. And my fear at that point, once we start getting
20 into how long summations are going to be, is that we're getting
21 awfully close to the July 4th weekend. I don't know what
22 the --

23 THE COURT: Well, look, first of all, I can sit 9:30
24 to 5:30 every day next week, and I think I told the jury we're
25 going to do that.

I6C7GAL8

Martin Fernandez - Cross

1 MR. TOUGER: Your Honor, I can just tell you right now
2 Mr. Galanis is suffering. And I'm not just saying this. I
3 know the Court has been very, very, very -- and I accentuate
4 very -- very nice to Mr. Galanis with his medical conditions,
5 but you've got to remember his day starts at 5 o'clock in the
6 morning.

7 THE COURT: Yes. No, I understand. We will see how
8 fast we're moving.

9 MR. TOUGER: And the accident he had, you know -- like
10 he could not make it to 5:30 tomorrow, I'll tell you that right
11 now.

12 THE COURT: Right now, as I said, I think we should
13 sit 9:30 to 5:30. We will see how things are going. Do you
14 want to sit next Friday, the 22nd? I'm happy to do it.

15 MR. TOUGER: Your Honor, I have to see if I can change
16 some court appearances.

17 THE COURT: Why don't you try and do that. Why don't
18 you a try and do that.

19 MR. QUIGLEY: Your Honor, just out of curiosity, I
20 think it sounds like we may be going into the week of the 25th.
21 There are some jury scheduling issues on the 26th.

22 THE COURT: Exactly. That's my worry, that there are
23 two jurors -- I don't recall which ones -- I'm sure Alison
24 remembers -- OK, 8 and 14 have issues on the 26th.

25 MR. TOUGER: I think we're obviously going to get

I6C7GAL8

Martin Fernandez - Cross

1 there no matter what.

2 DEPUTY COURT CLERK: 8 and 13.

3 MR. TOUGER: Maybe we can do the charge conference
4 that date.

5 THE COURT: Well, we will think about whether we
6 should dismiss them. We will see how far we've gotten. I
7 would be inclined to sit next Friday, the 22nd.

8 So, in any event, please check your calendars. Let me
9 know tomorrow if there is anything you cannot move so that we
10 can tell the jury that we'd like to sit next Friday. OK?

11 And then as we go along, please just give me as good a
12 sense as you can of timing so that I can build in the charge
13 conference without wasting a day. OK?

14 MR. SCHWARTZ: OK.

15 THE COURT: All right.

16 MR. SCHWARTZ: I had asked the government last week --
17 and they weren't prepared to answer then -- whether they were
18 still pursuing potentially the argument that the transfer of
19 sale of the restricted bonds was improper. I think if they're
20 willing to answer that, that would allow us to trim.

21 MR. QUIGLEY: We will try to circle back to
22 Mr. Schwartz on that either later tonight or first thing
23 tomorrow.

24 THE COURT: OK. Yes, if you can do that so that the
25 issue is resolved by the morning one way or the other, that

I6C7GAL8

Martin Fernandez - Cross

1 would be helpful.

2 All right, thank you. Have a good night.

3 (Trial adjourned to June 13, 2018 at 9:10 a.m.)

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

DANIEL TURNEY

Direct By Mr. Quigley2033
---------------------------------	-------

Cross By Mr. Hassan2054
-------------------------------	-------

Cross By Mr. Wenner2066
-------------------------------	-------

Cross By Mr. Touger2066
-------------------------------	-------

PATRICIA WALCH

Direct By Ms. Tekeei2067
--------------------------------	-------

Cross By Mr. Schwartz2100
---------------------------------	-------

FRANCISCO JOSE MARTIN FERNANDEZ

Direct By Ms. Mermelstein2115
-------------------------------------	-------

Cross2117
-----------------	-------

Cross By Mr. Touger2126
-------------------------------	-------

Cross By Mr. Hassan2127
-------------------------------	-------

FRANCISCO JOSE MARTIN FERNANDEZ

Direct By Ms. Mermelstein2128
-------------------------------------	-------

Cross By Ms. Notari2191
-------------------------------	-------

Cross By Mr. Touger2251
-------------------------------	-------

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

2095, 2224, 2299, 2294 and 12712001
---	-------

26092037
----------------	-------

9042041
---------------	-------

26162044
----------------	-------

1	813 . . . . .	.2047
2	2625 . . . . .	.2050
3	1076 . . . . .	.2074
4	1080 and 1085 . . . . .	.2078
5	1070, 1071, 1072 and 1073 . . . . .	.2084
6	1082 and 1084 . . . . .	.2089
7	1074 . . . . .	.2095
8	1075 . . . . .	.2096
9	1078 . . . . .	.2098
10	4503 . . . . .	.2133
11	1601 . . . . .	.2145
12	1604 . . . . .	.2149
13	1603 . . . . .	.2158
14	786-788 and 789-791 . . . . .	.2163
15	1609 . . . . .	.2182
16	1610 through 1612 . . . . .	.2184

DEFENDANT EXHIBITS

18	Exhibit No.	Received
19	3760, 3761, 3763, 3764 . . . . .	.2233

20

21

22

23

24

25